SUPREME COURT, U. S. 73-921 DEC 12
MICHAEL RODAK, JR.

IN THE UNITED STATES

IN THE

SUPREME COURT

On Appeal From
State Bar Grievance Board

IN THE MATTER OF Case No.
NEAL L. GROSSMAN 54257

APPENDIX TO

PETITION FOR WRIT OF CERTIORARI

NEAL L. GROSSMAN
Appellant
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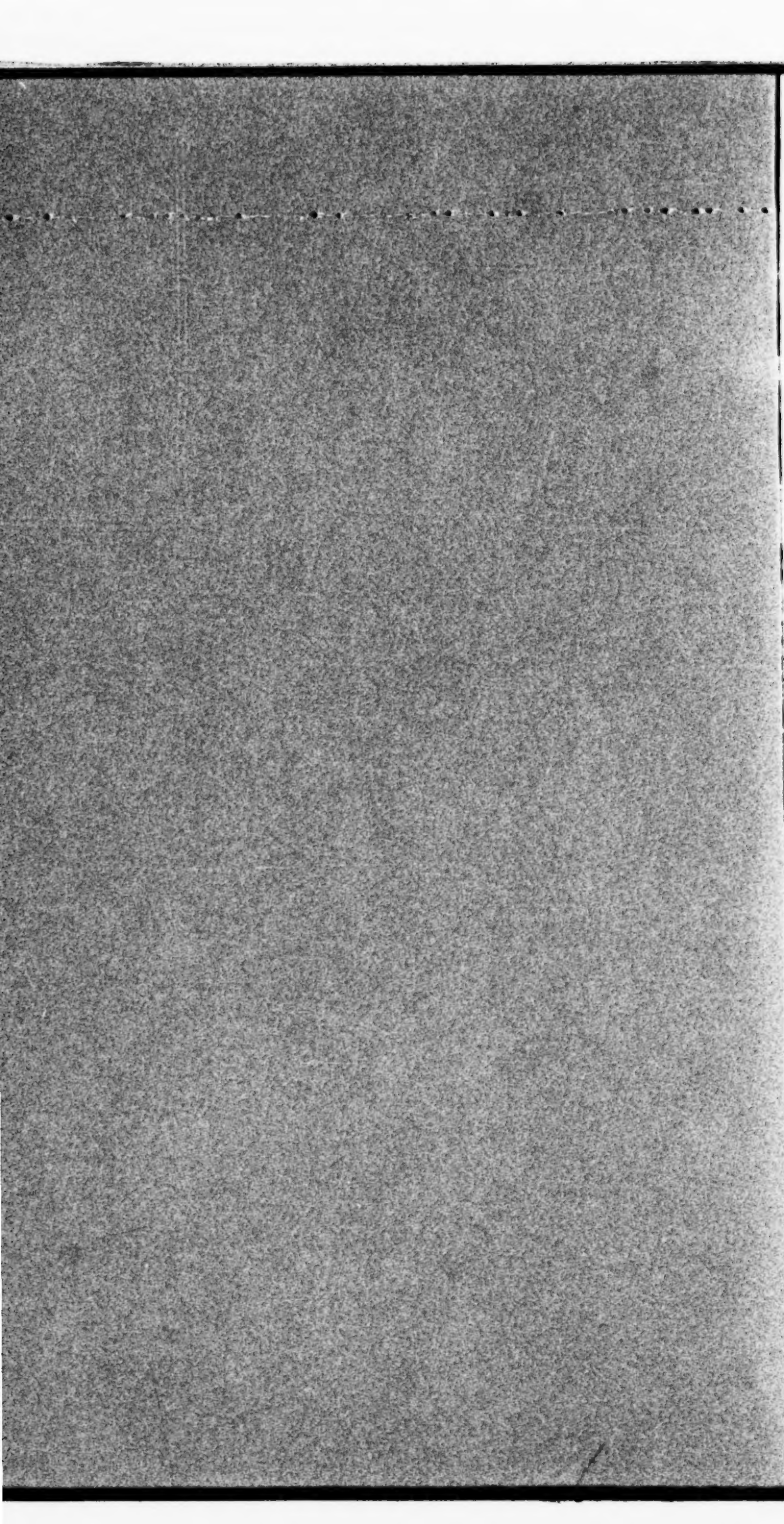

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STATE OF MICHIGAN

IN THE

SUPREME COURT

In the Matter of
NEAL L. GROSSMAN, a Member
of the State Bar of Michigan,

Case No. 54,257

Appellant.

BEFORE THE ENTIRE BENCH

APPLICATION FOR RE-HEARING PURSUANT TO MICHIGAN GENERAL COURT RULE 864-4

NOW COMES Neal L. Grossman, Appellant herein, a member of the Bar, and hereby Petitions the majority of this Honorable Court for reconsideration of its decision dated October 17, 1973, and states to the majority of this Honorable Court as follows:

1. Undecided was the issue presented for Appellate Review as to whether an attorney is privileged to report a crime actually committed against his person or property and has the same Constitutional Rights as any citizen -- a person under the 14th Amendment?

2. Undecided was the issue of whether or not Simpson v. Burton grants immunity from inaccurate reporting of crime when in fact a crime was committed against the attorney? [Oct. 2, 1950, 328 Mich 557, 44 NW 2d 178,180].

3. Undecided was the issue of whether or not statements made to the police in the course of Appellant's reporting a crime to the police were inadmissible under the rule in Simpson v. Burton.?

4. Undecided was the issue of whether or not the blatant misconduct of Rosenzweig justified reversal and reprimand of him, even if attorneys are not entitled to equal protection of the laws, to wit, Simpson v. Burton.

5. These issues were among the nine questions presented and briefed, the law being clear and uncontroverted and this Honorable Court having the duty as an appellate body not to determine facts already decided at the trial or lower level, but to decide the important questions of law and constitutional interpretation which it impliedly agreed to upon acceptance of Appellant's appeal.

6. Appellant further claims error by the majority because any "finding" of "not operating rationally" or "clearly suffering from emotional and hypertense reaction" would negate any finding of "illegal intent" or Mens Rea -- the nonphysical element which, combined with the act of the accused, makes up the crime charged. [Clark and Marshall Crimes, Fifth Edition, Callaghan &

Company, 1952, Page 60, Section 40.] If the standards of criminal law shall apply, then there is no Mens Rea. Even in civil proceedings where state action is involved, the standard or action or offense must be precise. [Soof v. City of Highland Park (May 3, 1971) 30 Mich. App. 400, 186 N.W. 2d 361.]

7. Moreover Appellant herein, respectfully contends if the Court is not governed by the rule of law and strict interpretation of the law and even-handed application to all its citizens and persons within its jurisdiction, then we are in the wrong pursuit and we should all be out of business if the rule of law is not controlling.

8. Wherefore, Appellant deserves his rights just like any other person, within this Court's jurisdiction, and prays for a decision on the nine legal questions on appeal instead of a re-hearing on the factual merits.

9. Just because Appellant attempted to mitigate the seriousness of the situation, in order to make as few waves as possible, even though he was a victim of a crime is not misconduct, any finding of misconduct is a great injustice.

The only deceit involved was the misconduct of Rosenzweig in deceitful citations of authority of law to this Honorable Supreme Court with intent to mislead this Honorable Court to an erroneous decision, to wit: Hall v. American Investment. See State Bar Appellee's Brief and Appendix, page 5.

10. Appellant further states that while attorneys have distinct and special duties and obligations because of their attorney-client, or attorney-attorney, or attorney-judge, or attorney-public relationships, it is fundamentally wrong and contrary to the law and constitutional cases cited in Appellant's Brief, to grant any person within our jurisdiction less than equal protection of the laws and less than due process of law and deny any person the privileges, immunities and rights secured to any other person by the case law, common law, constitutional law or criminal law or any other precedent and rule of law or evidence in effect at the time of his hearing. Especially when State Action is involved and the history of America dictates the need to protect the individual rights, liberty or freedoms. For if one man is denied who is to say the next man won't be and the next, and the next, and his children, and his grandchildren.

11. It seems in view of this Honorable Supreme Court's written decision, this case was narrowed by the Court to the issue of what Appellant told the Novi Police. His testimony was that he originally said the holding of his car might be a prank. Later he reported to the Southfield Police that the holding of this car consisted of or constituted a larceny by conversion.

However, throughout the entire consideration and review of the matter, it evidently never occurred to anyone THAT the "prank" by which appellant's car was held could also constitute the

crime of larceny by conversion. In fact, this was actually the case regardless of how it was referred to in the conversation with the police. The prank and conversion were one and the same and cannot be separated by differences in connotation.

Therefore, the holding of Appellant's car unlawfully, whether resulting from an obvious "prank" or expressed larceny by conversion were actually one and the same crime being reported; and in no way, as indicated above, can they be separate or different from each other.

Whatever the motive, Appellant did not lie in reporting unlawful holding of his car to police as a "prank", since, again, a prank can at the same time be a larceny by conversion as was the case here. Appellant's car was being unlawfully held and this was the essence of what Appellant described to police as a "prank", which was also at the same time a larceny by conversion.

If the police found that indeed Appellant's car was not unlawfully held or the situation he described to them was fictitious then and only then could the conclusion be drawn that a lie was told to the police.

Certainly, justice requires an opinion evaluating the arguments and law presented by both parties before this Honorable Supreme Court.

Yet, the majority opinion reads rather like a prosecutor's opening statement or summation rather than a learned evaulation of the principles of law as they should be applied in a matter important enough to be considered by this Honorable Court.

It is as if all the research and argument, carefully briefed and printed for presentation of this cause for adjudication was overlooked or forgotten in the rush of the Court's business.

However, Appellant is certain that if this be the case, the stature of the Michigan Supreme Court is such that administrative inefficiency will not and should not interfere with judicial efficiency.

IN CONCLUSION, the majority opinion of this Honorable Court should be reversed, either based upon a more thorough appraisal and reconsideration of the facts or a decision based upon the constitutional issues and law presented in the appeal and accepted for adjudication by this Honorable Court.

Respectfully submitted,

/s/ Neal L. Grossman
NEAL L. GROSSMAN
A member of the State Bar of Michigan
Appellant herein
A person under the 14th Amendment
to the U.S. Constitution
4120 W. Maple Rd.
Birmingham, MI 48010
Tel. 851-1971

DATED: Oct. 22, 1973

STATE OF MICHIGAN

IN THE

SUPREME COURT

In the Matter of
NEAL L. GROSSMAN, a MEMBER
OF THE STATE BAR OF MICHIGAN,
Case No. 54,257

APPELLANT.

BEFORE THE ENTIRE BENCH

MOTION TO STAY ORDER OF DISCIPLINE - PUBLICATION OF REPRIMAND PENDING APPEAL TO THE UNITED STATES SUPREME COURT, WASHINGTON, D. C.

NOW COMES, Neal L. Grossman, Appellant herein, and respectfully moves this Honorable Supreme Court for a Stay of Proceedings pending appeal to the United States Supreme Court, and states the following:

1. October 17, 1973, a decision was entered affirming State Bar Grievance Board order of Reprimand for reporting a crime to the police, to wit: larceny by conversion of Appellant herein, Neal L. Grossman's automobile. . . instead of resorting to civil process, although Appellant believes unequivocally that his right to contact the police was immuned under State Law.

2. The decision of the majority raises a substantial U.S. constitutional issue whether attorneys are entitled to equal protection of the law, and to allow a State administrative employee or appointee uncontrolled discretion in setting after the fact standards with no notice that an immune act of reporting a crime to police, when no breach of duty to a client, Court, or the public is involved is the grounds for permanent mar to Appellant's professional reputation and causing irreparable harm to Appellant, for the rest of his life whenever he would apply for a job or seek admittance to practice law in another state or in a Federal Court.

3. The uncontrolled discretion in Richard Senter, or some successor who might have more or less integrity, who might elect or refrain from prosecution at his whim or caprice is a highly dangerous situation for practicing attorneys in the State of Michigan or for all persons within the jurisdiction subject to State administrative or agency actions, controls and powers.

4. That this application for Re-hearing pursuant to Michigan General Court Rule 864.4 and this Motion to Stay Order of Affirmance dated October 17, 1973, is based upon the Appellant's Brief and Appendix, oral argument and Eastown Theatre, Inc. v. Roman S. Gribbs; United States Court of Appeals for the Sixth Circuit; case No. 72-1089, Brief of Appellant and Order Remanding for Further Proceedings, before Celebrezze,

McCree and Miller, Circuit Judges, filed October 26, 1972, herein attached and incorporated herein by specific reference thereto.

WHEREFORE, Neal L. Grossman, Appellant herein, prays for a Stay of Proceedings, Stay of the Order of Discipline, and Stay of Publication of the Reprimand, pending filing a notice of appeal and pending appeal to the United States Supreme Court, Washington, D.C.

Respectfully submitted,

/s/ Neal L. Grossman
NEAL L. GROSSMAN

DATED: Oct. 22, 1973

STATE OF MICHIGAN

IN THE

SUPREME COURT

In the Matter of
NEAL L. GROSSMAN, a Member
of the State Bar of Michigan,
Case No. 54,257
APPELLANT.

BEFORE THE ENTIRE BENCH

SUMMATION

Was Appellant's situation treated even-handedly?

Did State Bar Administrator treat Appellant Neal L. Grossman's act of reporting a crime to the police which had actually occurred to him, objectively and on the same basis that he treats admitted violations of well-known standards of conduct which come to his attention.

Under Rule 15.7, the State Bar Administrator has the duty to investigate and to refer matters to a Hearing Panel unless "there is no reasonable cause to believe the Respondent is guilty of misconduct."

September 25, 1973, notice of violation of well-known standard of conduct was within the knowledge of the administrator and evidence was in his possession. See Marcel C. Phillips letter of September 25, 1973 to William R. Walsh, Jr., Esq.

October 4, 1973, a letter of dismissal was sent without any further investigation even though the standard breached was admitted. Appellant's act was in the capacity of a citizen and was an act any citizen who was a victim of a crime would be privileged and immuned from any adverse consequence. The finding by an appellate Reviewing Supreme Court, of guilt for "misconduct" is unevenhanded State Action in view of the administrator's "dismissal" and failure to further investigate admitted serious violation of known standard. See October 4, 1973 letter from Marcel C. Phillips, Assistant State Bar Grievance Administrator, to Neal L. Grossman.

Was Appellant subjected to arbitrary, capricious and unreasonable State Action or actions of a State Administrator?

Should the Order of Discipline be reversed because Appellant -- "a person within this jurisdiction" -- [14th Amendment, Section 1 of the U.S. Constitution], was denied evenhanded and fundamental fairness in the treatment of his case, compared to the "Standards" and practice of the State Bar Grievance Board Administrator.

No person should be subject to merely the uncontrolled discretion of a State Administrator. Every person has the right to be judged on the objective law, legal precedent, and established Standards evenhandedly applied.

WHEREFORE, Appellant herein, Neal L. Grossman, moves for dismissal of complaint, as fairness, equity and good conscience, and the Law requires in this case.

Justice requires a decision based upon law and precise Standards, not merely an opinion based upon the type and kind of judgment which people make in deciding their vote on Election Day. The opinion or Judgment on Election Day might be the honest evaluation or feelings of the person, yet such is not sufficient to meet the Constitutional duty imposed by the 14th Amendment upon which all officers of the Court have sworn to uphold!

Respectfully submitted,

/s/ Neal L. Grossman
NEAL L. GROSSMAN
Appellant,
"a person under the 14th Amendment"

DATED: OCTOBER 22, 1973

APPENDIX

"A"

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EASTOWN THEATRE, INC.,
a Michigan Corporation,
Plaintiff-Appellant

-vs- No.

ROMAN S. GRIBBS, Mayor of the City of Detroit, and JOHN F. NICHOLS, Police Commissioner of the City of Detroit,
Defendant-Appellees

BRIEF OF APPELLANT

Appeal from Order of the United States District Court for the Eastern District of Michigan, Southern Division, denying issuance of temporary restraining order and prayer for issuance of a temporary restraining order by the United States Court of Appeals for the Sixth Circuit. Case No. 37559

LAMPERT AND FRIED
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I Should the United States Circuit Court of Appeals grant an immediate hearing and issue a temporary injunction and restraining order restraining the Mayor of the City of Detroit, and his agents, servants and employees, from enforcing an order of revocation of a concert hall license issued to Appellant and maintain the status quo pending a hearing when the revocation denies freedom of speech guaranteed under the First Amendment to the United States Constitution?	6
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to restrain the enforcement by the Mayor of the City of Detroit of a City ordinance of the City of Detroit which revokes Appellant's concert hall license when the ordinance is invalid on its face and is violative of Appellant's rights under the First Amendment to the Constitution of the United States? 12

(ii)

III Where the Appellant alleges immediate substantial and irreparable harm to its business activities by revocation of its concert hall license should the Court of Appeals grant a temporary injunction against Appellees restraining enforcement of the revocation of the concert hall license until a hearing has been held on the legality of the revocation? 18

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(iv) OTHER AUTHORITIES CITED

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(V) STATEMENT OF QUESTIONS PRESENTED

SHOULD THE UNITED STATES CIRCUIT COURT OF APPEALS GRANT AN IMMEDIATE HEARING AND ISSUE A TEMPORARY INJUNCTION AND RESTRAINING ORDER, WHEN THE UNITED STATES DISTRICT COURT HAS REFUSED TO GRANT SUCH AN ORDER, RESTRAINING THE MAYOR OF THE CITY OF DETROIT AND HIS AGENTS, SERVANTS AND EMPLOYEES FROM ENFORCING THE ORDER OF REVOCATION OF APPELLANT'S CONCERT HALL LICENSE, UNDER AN ORDINANCE INVALID ON ITS FACE, AND MAINTAIN THE STATUS QUO PENDING DETERMINATION OF THE VALIDITY OF SAID ORDINANCE WHERE APPELLANT CLAIMS IRREPARABLE HARM AND DENIAL OF FREEDOM OF SPEECH GUARANTEED UNDER THE FIRST AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES?

Appellant says "Yes".

Appellees have not yet answered.

(1) ISSUES

I

SHOULD THE UNITED STATES CIRCUIT COURT OF APPEALS GRANT AN IMMEDIATE HEARING AND ISSUE A TEMPORARY INJUNCTION AND RESTRAINING ORDER RESTRAINING THE MAYOR OF THE CITY OF DETROIT, AND HIS AGENTS, SERVANTS AND EMPLOYEES, FROM ENFORCING AN ORDER OF REVOCATION OF A CONCERT HALL LICENSE ISSUED TO APPELLANT AND MAINTAIN THE STATUS QUO PENDING A HEARING WHEN THE REVOCATION DENIES FREEDOM OF SPEECH GUARANTEED UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION?

II

SHOULD THE CIRCUIT COURT OF APPEALS GRANT AN IMMEDIATE TEMPORARY RESTRAINING ORDER UNDER RULE 62 (g) OF THE FEDERAL RULES OF CIVIL PROCEDURE TO RESTRAIN THE ENFORCEMENT OF THE MAYOR OF THE CITY OF DETROIT OF A CITY ORDINANCE OF THE CITY OF DETROIT WHICH REVOKES APPELLANT'S CONCERT HALL LICENSE WHEN THE ORDINANCE IS INVALID ON ITS FACE AND IS VIOLATIVE OF APPELLANT'S RIGHTS UNDER THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?

III

WHERE APPELLANT ALLEGES IMMEDIATE SUBSTANTIAL AND IRREPARABLE HARM TO ITS BUSINESS ACTIVITIES BY REVOCATION OF ITS CONCERT HALL LICENSE, SHOULD THE COURT OF APPEALS GRANT A TEMPORARY INJUNCTION AGAINST APPELLEES RESTRAINING ENFORCEMENT OF THE REVOCATION OF THE CONCERT HALL LICENSE UNTIL A HEARING HAS BEEN HELD ON THE LEGALITY OF THE REVOCATION?

(2) STATEMENT OF FACTS

Although Appellant had been issued a concert hall license and a public dance hall license, this case involves the concert hall license only.

Appellant is engaged in the operation of a concert hall in the City of Detroit, County of Wayne and State of Michigan. It operates under a license granted by the City of Detroit and has operated for a period in excess of two (2) years, the original license having been issued September 16, 1969. Subsequent to the granting of the license, Appellant leased permises at 8041 Harper Avenue, Detroit, Michigan, and expended the sum of FIFTEEN THOUSAND ($15,000.00) DOLLARS for lease-hold improvements.

The method by which the Appellant operates its business is to contract with renown local and national musical artists to perform at Appellant's premises. A deposit of at lease fifty (50%) per

cent of a contract price is given to the talent agencies at the time the contracts are signed and said contracts are made prior to the artists' performances. There were outstanding contracts with artists for performances on December 17th and 18th, 1971, for the sum of SEVEN THOUSAND THREE HUNDRED ($7,300.00) DOLLARS and there are outstanding contracts for each Friday and Saturday thereafter through the month of April, 1972. If Appellant defaults on these contracts, it will be liable for approximately EIGHT THOUSAND ($8,000.00) DOLLARS each week thereafter through the month of April, 1972.

Appellant has in its employ fifteen people.

(3) On December 3, 1970, Appellant was advised by Appellee, ROMAN S. GRIBBS, Mayor of the City of Detroit, that Appellant's license to operate a concert hall was revoked. The reasons stated were that "indecent, immoral and profane language and disorderly conduct is permitted together with other activities prohibited by the Municipal Code of the City of Detroit".

On December 22, 1970, Appellant commenced suit in Wayne County Circuit Court, Civil Action No. 171 451 (see Appellant's Exhibits A and A-1) and the parties orally agreed that no action would be taken to enforce the revocation of Appellant's concert hall license until after a written specification of charges was provided and a hearing held. No order was entered by the Wayne County Circuit Court and no further action has been taken by either litigant in said suit.

On December 24, 1970, Appellant was advised by the Mayor of the City of Detroit that WILLIAM J. COUGHLIN, Assistant Corporation Counsel of the City of Detroit, had been appointed hearing officer.

On October 5, 1971, some ten (10) months later, Appellant was advised that a hearing had been set for October 21, 1971, at 10:00 A.M. and Appellant was served with a written specification of charges (see Exhibit B attached to Appellant's Complaint). At the hearing before WILLIAM J. COUGHLIN, which commenced on October 20, 1971, the City of Detroit was represented by ROBERT D. McCLEAR, Chief Assistant Corporation Counsel and the immediate superior of the hearing officer. In addition to testimony on the written specification of charges, testimony was offered at the hearing in regard to alleged violations committed by the Appellant which were not contained in the written specification of charges, and although Appellant strenuously objected to the introduction of evidence relating to the matters not contained in the written specification of (4) charges the hearing officer received this testimony. The hearings were concluded on November 24, 1971. On December 13, 1971, Appellant was hand-delivered a letter dated December 10, 1971, from Appellee, ROMAN S. GRIBBS, Mayor of the City of Detroit, advising the Appellant that its licenses had been revoked and said letter had attached thereto a copy of the recommendations and findings of the hearing officer (see Exhibit C - C 6 attached to Appellant's Complaint).

The sole finding of violation made by the hearing officer contained in the written specification of charges supplied to Appellant was based upon two (2) incidents in which Detroit policemen unlawfully entered Appellant's premises at 8041 Harper Avenue, Detroit, Michigan, at hours that the premises was closed to the general public and when no business activity was being conducted, without Appellant's consent, to make purchases of drugs from persons the policemen had solicited outside the Appellant's premises to come into the concert hall.

The Ordinances under color of which Appellee, ROMAN S. GRIBBS, Mayor of the City of Detroit, acted in revoking Appellant's license (see Exhibits D - D1 and E attached to Appellant's Complaint) provide that:

> a) The Mayor may revoke any licenses issued for good and satisfactory reasons, and
>
> (5) b) The Mayor may deny or revoke the licenses if such action, in his opinion, is in the best interests of the city and its inhabitants.

The Appellant had requested an appeal to the Common Council of the City of Detroit as provided by Ordinance, but had been advised by the Corporation Counsel of the City of Detroit that the Appellees intend to take action against Appellant if Appellant operates its business during the pendency of said appeal. The

Common Council has further advised the Appellant that it does not intend to grant an appeal, although Chapter 5, Article 2, Section 5-2-3 of the Ordinances provides for such an appeal (copy of which has been attached to Appellant's Complaint as Exhibit D). Appellant alleges in its Complaint that if a temporary injunction is not granted, its business will be destroyed, it will suffer the immediate loss of approximately EIGHT THOUSAND ($8,000.00) DOLLARS and the continuing loss of approximately EIGHT THOUSAND ($8,000.00) DOLLARS per week thereafter through the month of April, 1972. Appellant further alleges that it will lose its lease and the monies paid for lease-hold improvements and it will be forced to discharge its employees.

Further, it alleges that the relationship with talent agencies will be lost, destroying the ability to engage in the musical business thereafter. Appellant further alleges in its Complaint that a concert hall is a place for public expression of ideas by way of music and lyrics and is protected by the First Amendment to the United States Constitution.

(6) ISSUE I

SHOULD THE UNITED STATES CIRCUIT COURT OF APPEALS GRANT AN IMMEDIATE HEARING AND ISSUE A TEMPORARY INJUNCTION AND RESTRAINING ORDER RESTRAINING THE MAYOR OF THE CITY OF DETROIT, AND HIS AGENTS, SERVANTS AND EMPLOYEES, FROM

ENFORCING AN ORDER OF REVOCATION OF A CONCERT HALL LICENSE ISSUED TO APPELLANT AND MAINTAIN THE STATUS QUO PENDING A HEARING WHEN THE REVOCATION DENIES FREEDOM OF SPEECH GUARANTEED UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION?

Rule 62 (g) of the Federal Rules of Civil Procedures provides:

> "Power of Appellate Court Not Limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered."

Rule 8 (a) of the Federal Rules of Appellate Procedure, provides:

> "Stay Must Ordinarily Be Sought in the First Instance in District Court; Motion for Stay in Court of Appeals. Application for a stay of the judgment or order of a district court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in

the district court. A motion for such relief may be made to the court of appeals or to a judge thereof, but the motion shall show that application to the district court for the relief (7) sought is not practicable, or that the district court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the district court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally will be considered by a panel or division of the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the court."

The Appellant urges that their standing in the Federal Court is by virtue of Title 42, Section 1983, U.S.C. (Civil Rights Act) and Title 28, Section 1343, U.S.C. (Civil Rights Act), and in reliance upon Dombrowski v. Pfister, 380 U.S. 479, wherein the Court says at Page 486:

"For example, we have consistently allowed attacks on overly broad statutes

> with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity . . . We have fashioned this exception to the usual rules governing standing . . . because of the danger of tolerating in the area of First Amendment freedom, the existence of a penal statute susceptible of sweeping and improper application."

(8) In the Dombrowski v. Pfister case, supra, the Supreme Court reversed a decision of a three-judge court which had denied injunctive relief where the state prosecutors threatened further prosecutions under a state statute which the Supreme Court found void for vagueness, reasoning that future prosecution based on the statute could not be taken in good faith. (In the case at bar, operation of a concert hall without a license is a misdemeanor punishable by a fine of up to FIVE HUNDRED ($500.00) DOLLARS or by imprisonment for a term of up to ninety (90) days.)

The Courts position on accepting actionable claims under the Civil Rights Acts is discussed in Hornsby v. Allen, 326 Fed. 2d 605, (1964), wherein the Court says at Page 611:

> "The trend of the recent cases, however, has been to accept more and more actions under the civil rights statutes . . . It is, therefore, now recognized that no specific intent to deprive a plaintiff of his civil rights need be alleged".

In determining whether the Court should grant Appellant immediate hearing and relief, Appellant urges that the Court consider the fundamental constitutional guarantees as provided by the First Amendment to the United States Constitution and the denial thereof by the Appellees. The Appellant's business activities are that of a concert hall which is a vehicle for conveying ideas. The guarantees of the First Amendment as to Appellant's concert hall in no way differs from the operation of a theatre which exhibits films. See Jodbor Cinema, Ltd., (9) et al. v. Sedita, et al., 309 F. Supp. 868, and Freedman v. Maryland, 380 U.S. 51, or the selling of newspapers, Strasser v. Doorley, 432 F. 2d 567, engaging in the operation of a strip-tease bar, Ponti v. City of Madison, 319 R. Supp. 440, or conducting a parade, Shuttlesworth v. Birmingham, 394 U.S. 147.

In the Shuttlesworth v. Birmingham, supra, Rev. Shuttlesworth was convicted for parading without a permit or a license. The ordinance provided that the city commission had the right to grant a permit for a parade or a demonstration and may refuse to grant the permit, if in their judgment, it was not in the best interests of the public welfare, peace, safety, health, decency, good order, morals or convenience of the community. The defendants urged that the ordinance involved was not "pure speech" but the use of public streets and sidewalks for which the municipality exercises control for the public safety. However, the Court on Page 152 of its opinion states:

> "But our decisions have also made clear that picketing and parading may nonetheless constitute methods of expression, entitled to First Amendment protection . . . it must not in the guise of regulation be abridged or denied. Citing cases."

In the case of Strasser v. Doorley, supra, the City of Rhode Island had an ordinance which provided that a newsboy must obtain a permit which may be refused if he is not of good character and may be revoked for the use of "indecent or profane language or disorderly conduct or otherwise in the discretion of the bureau." The Court said at Page 569:

> "Turning to the merits of plaintiff's claim, defendants concede that the section (14-44) which gives the licensing bureau a broad discretion to refuse a permit, is unconstitutional. They are, of course, correct. Citing cases. Correspondingly, section 14-52 which permits discretionary revocation of the license must be invalidated . . . in (10) the face of these burdens upon the exercise of First Amendment rights, defendants point to no governmental interest of any importance that would be served by registration and identification."

That in the case of Jodbor Cinema, Ltd., et al, v. Sedita, et al., supra, a case similar to the case at bar, the plaintiff sought, among other things, to enjoin the enforcement of the revocation

of its theatre license because the ordinance that granted the Mayor the power to revoke a theatre license provided that the Mayor could revoke the license for cause and after a hearing. The Court said at Page 877:

> "The crucial language in Section 102 is 'for cause and after a hearing'. No more elaborate guidelines specifically outlining those grounds for revoking a license, by either ordinance or charter provision, have been presented to the court. There is nothing to indicate to the licensing authority or to a licensee what conduct might result in the revocation of a license . . .
>
> "The United States Supreme Court has declared as unconstitutional laws which restrict the exercise of one's First Amendment freedoms without narrow, objective and definite standards to guide the authority responsible for licensing the exhibition of films." (Emphasis supplied)

The Court further discussed the importance of dealing with statutes and laws, invalid on their face, which impose criminal sanctions for violation thereof and said in the Jodbor Cinema, Ltd., et al. v. Sedita, et al., supra, at Page 878:

> (11) "The due process protections required in any 'penal' statutory scheme are especially important where rights protected

by the First Amendment are involved. This was evidenced again in Interstate Circuit v. Dallas, 390 U.S. 676, 88 S. Ct. 1298, 20 L. Ed. 2d 225 (1968). There the Supreme Court enunciated the well established principle that the absence, in a licensing statute, of narrowly-drawn, reasonable and definite standards for officials to follow is constitutionally fatal. See also Sokolic, dba Coastal Book Mart, Inc. v. Ryan 304 F. Supp. 213 (S.D. Ga. 1969)."

(12) ISSUE II

SHOULD THE CIRCUIT COURT OF APPEALS GRANT AN IMMEDIATE TEMPORARY RESTRAINING ORDER UNDER RULE 62 (g) OF THE FEDERAL RULES OF CIVIL PROCEDURE TO RESTRAIN THE ENCORCEMENT BY THE MAYOR OF THE CITY OF DETROIT OF A CITY ORDINANCE OF THE CITY OF DETROIT WHICH REVOKES APPELLANT'S CONCERT HALL LICENSE WHEN THE ORDINANCE IS INVALID ON ITS FACE AND IS VIOLATIVE OF APPELLANT'S RIGHTS UNDER THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?

An examination of the Ordinances upon which Mayor ROMAN S. GRIBBS and JOHN F. NICHOLS acted in revoking Appellant's licenses being Ordinance No. Chapter 5, Article 2, Section 5-2-1, 5-2-3, 5-2-6, and Ordinance No. 147-G, Chapter 31, Article 1, Section 31-1-4, discloses:

"Sec. 5-2-1. Licenses required.

"No person shall exhibit or maintain, in the city, any circus, menagerie, street carnival, game, ride or theatrical exhibition, or give any concert, vocal or instrumental, or exhibit any natural or artificial curiosity, or give a show, or provide entertainment of any kind for which pay is demanded or received, without a license from the mayor and for every license granted, such person shall pay the license fees specified in this article." (Ord. No. 712-F, Sec. 1; Ord. No. 749-F, Sec.1.)(Effective July 19, 1962)

"Sec. 5-2-3. Authority of mayor to refuse or revoke licenses; right of applicant or licensee to appeal to common council.

"The mayor may refuse to issue licenses to the parties and for the purposes enumerated (13)in this article and may revoke any license already issued for <u>good and satisfactory reasons</u>, which shall be reported to the common council, in writing, by the mayor at its first session following such refusal or revocation. Any part aggrieved by the action of the mayor in refusing or revoking a license may appeal to the common council, and upon due consideration by the common council, the action of the mayor may be reversed upon a two-thirds vote of all the councilmen elected." (Ord. No. 712-F, Sec. 11.) (Effective July 19, 1962) (Emphasis supplied)

"Sec. 5-2-6. Conduct of licensees and patrons.

"No person or company receiving a license under this article shall permit any disorderly conduct or the use of any immoral, profane, or indecent language, or permit the sale, giving away, delivering, drinking or use therein of any beer, wine, malt or intoxicating liquors or beverages of any description or have connected with such place of amusement or exhibition, by side entrances or otherwise, any bar, saloon or place where malt or intoxicating liquors are sold or given away; or permit such place of amusement or exhibition to become and be a place of resort of thieves, prostitutes or other disorderly persons." (Ord. No. 712-F, Sec. 7.) (Effective July 19, 1962)

"Ordinance No. 147-G, Chapter 31, Article 1, Denial, Revocation or Suspension of Licenses.

"AN ORDINANCE to amend Section 31-1-4 of Chapter 31, Article 1 of the Code of the City of Detroit to provide for the revocation and suspension of licenses.

(14) "IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT:

"Section 1. That Section 31-1-4 of Chapter 31, Article 1 of the Code of the

City of Detroit be and the same is hereby amended to read as follows:

"Sec. 31-1-4. The Mayor may deny, revoke or suspend licenses at any time. If the license is denied, the applicant shall be given written notice of the reasons therefor. If the license is revoked, the licensee shall be given ten days' notice prior thereto and the reasons therefor in writing. Notice provided for in this article shall be mailed or personally delivered to the place of business of the licensee or to the address that appears on the application for license. Any person aggrieved by the denial, revocation or suspension shall be entitled to a hearing before the Mayor or person authorized by him to conduct the same. Application for said hearing shall be addressed to the Mayor in writing and must be made within thirty days of the mailing of the notice of denial or revocation. Such hearing may be adjourned upon cause shown.

"The licensee shall be given an opportunity at such hearing to present reasons justifying his right to be a licensee or to continue as a licensee, and the departments having jurisdiction over the occupation or business of such licensee shall be given an opportunity to present reasons justifying such denial or revocation. After the hearing provided for in this section, the Mayor may deny or revoke the license if such action,

In his opinion, is in the best interests of the city and its inhabitants. (Emphasis supplied)

(15) "Section 2. This ordinance is declared necessary for the preservation of the peace, health, safety and welfare of the people of the City of Detroit and is hereby given immediate effect." (Effective February 3, 1966)

In the case of Edgewood Park Amusement Co. v. Stark, 325 Mich. 60, the Court held that an ordinance granting the Mayor the power to revoke licenses issued "for good and satisfactory reasons" is void because of the arbitrary power conferred upon the Mayor.

In the case of Devereaux v. Genesee Township Board, 211 Mich 38, the Court held that it is improper to attempt to confer arbitary power to grant or refuse licenses according to the whim or caprice of the Board. See also Postal v. Village of Grosse Pointe, 239 Mich. 286; Ritar v. City of Pontiac, 276 Mich 416; Osios v. City of St. Clair Shores, 344 Mich 693.

In the early case of Robison v. Miner and Haug, 68 Mich. 549, it was held:

" . . . there can be neither fairness nor uniformity in operation of the law. If no standard is laid down, there may be as many scales of fitness and unfitness as there are boards."

Where the right to engage in an occupation is a right granted by licenses, it is further the right of the Appellant to know at all times, the guides and standards under which it must operate as a licensee and the conditions under which the licenses may be revoked. Such standards and guides are wholly lacking in the instant case.

(16) In the case of the concert hall license, the licensee knows only that its license may be revoked by the Mayor "for good and satisfactory reasons" which shall be reported to the Common Council in writing by the Mayor, and in the case of all licenses, when the Mayor determines that "it is in the best interests of the city and its inhabitants" that the license be revoked.

A reading of the Ordinances and all of the sub-sections contained therein, we find that Section 5-2-1, 5-2-3, and 5-2-6 became effective July 19, 1962, and Ordinance No. 147-G, Chapter 31, Article 1, became effective February 3, 1966, and apparently superseded or elaborated on the earlier sections. It may be argued that certain of the standards set forth in Section 5-2-6 are definite and ascertainable; however, it is quite obvious that the other standards contained in Section 5-2-3 and Ordinance No. 147-G are vague, broad and subjective. Taking the Ordinances and their sub-sections in their entirety, as the Court must do; the Court need not go into the question of whether or not Ordinance No. 147-G supersedes, modifies or broadens the other provisions, the Ordinances must fall

for failure to meet the tests of Jodbor Cinema, Ltd., et al. v. Sedita, et al., supra.

A denial of First Amendment rights is a denial of one of our most sacred freedoms, and each day that it is taken away is a day of irretrievable loss. In the case of Entertainment Systems, Inc. v. Sedita, 319 F. Supp. 686 (1970), the Court said at Page 689:

> "First Amendment rights are preferred freedoms in our society. Any restrictions must be narrow, reasonable and the subject (17) of equal application throughout the community. One indication of the importance of preserving these rights is the recent Supreme Court ruling that a plaintiff faced with an unconstitutional licensing law, as in the present case, is entitled to ignore it and continue in business. See Shuttlesworth v. Birmingham, 394 U.S. 147, 89 S. Ct. 935, 22 L. Ed. 2d 162 (1969)."

(18) ISSUE III

WHERE APPELLANT ALLEGES IMMEDIATE SUBSTANTIAL AND IRREPARABLE HARM TO ITS BUSINESS ACTIVITIES BY REVOCATION OF ITS CONCERT HALL LICENSE, SHOULD THE COURT OF APPEALS GRANT A TEMPORARY INJUNCTION AGAINST APPELLEES RESTRAINING ENFORCEMENT OF THE REVOCATION OF THE CONCERT HALL LICENSE UNTIL A HEARING HAS BEEN HELD ON THE LEGALITY OF THE REVOCATION?

Appellant has been in business for more than two years. Although Appellee advised Appellant on December 30, 1970, that WILLIAM J. COUGHLIN had been appointed the hearing officer, it was not until approximately ten months later, to wit: October 5, 1971, that Appellant was served with a written specification of charges. It is likewise significant that of the written specification of charges laid against Appellant, testimony was introduced by Appellant on charges extending from April 5, 1970, to June 6, 1970--not less than sixteen (16) months prior to the serving of the written specification of charges.

It should again be noted that the hearing officer was appointed December 30, 1970, and the written specification of charges were hand-delivered to Appellant on Oct. 5, 1971, approximately ten (10) months after the appointment of the hearing officer. That the most recent written specification of charges concerning which competent evidence was introduced allegedly occurred in June of 1970--some sixteen (16) months before the date the written specification of charges were given to Appellant.

(19) In the absence of competent evidence in support of written specification of charges not later than June 6, 1970, it can be seen that there is no compelling reason why Appellant's business should be destroyed.

Appellant does not ask that it be permitted to commit illegal acts during the pendency of

this action. Appellant asks only that Appellees be restrained from enforcing their alleged revocation in light of the relatively great lapse of time in pressing these charges.

It is fundamental that if Appellant is not permitted to continue its business pending a determination of the validity of the Ordinances, its business and property will be forthwith destroyed and lost by virtue of the fact that said business will immediately sustain huge and staggering losses under contracts it has entered into. Appellant contends that the revocation Ordinances are clearly invalid; pending a hearing thereon, Appellant would suffer irreparable losses immediately from which it could not recover and render the entire matter moot in the event it should prevail in these proceedings. It would be fair and justice would seem to require the Appellees to make a showing of the urgency necessary in revoking Appellant's right to do business in the light of the fact that throughout the proceedings no urgency was indicated on the Appellee's conduct during the course of the proceedings.

Your writer need not restate the facts showing the urgency in its request for immediate relief in order to save Appellant's business, its business contacts and avoid substantial liability on existing contracts, all facts having (20) been stated in the Appellant's Motion and Statement of Facts in Appellant's Brief.

In the case of Ponti v. City of Madison, 319 F. Supp. 446 (1970) the Court allowed the preliminary injunction and said at Page 450:

> "I find and conclude that if the plaintiffs continue to present dance entertainment which violates the disputed ordinance, they face a serious and practical threat that their licenses will be suspended or revoked; and that the economic consequences of such a revocation would be difficult, if not impossible, to measure. I also find and conclude that plaintiffs enjoy a reasonably good chance to succeed in their contention that the disputed ordinance is so broadly drawn as to proscribe forms of the dance which are entitled to constitutional protection as forms of expression as well as to proscribe forms of the dance which may not be so entitled, and to succeed in their contention that the existence of such an overly broad prohibition is a deterrent to the exercise of expression through those forms of the dance which are entitled to such constitutional protection."

The injunctive relief sought is the only relief available to Appellant. A denial will have the effect of closing Appellant's business and loss of Appellant's business contacts rendering, in effect, the outcome of any litigation in the lower court moot as to this Appellant.

A matter which arose in the lower Court, which your writer feels an obligation to point out

to this Court, concerns the obiter dictum query of the learned Trial Judge regarding the existence of a State Court action between (21) these parties and its effect on these proceedings.

Following receipt of the first revocation letter of December 3, 1970, from the Mayor of the City of Detroit, revoking Appellant's concert hall license, Appellant commenced action No. 171 451 in the Circuit Court for the County of Wayne on December 22, 1970, against the City of Detroit and Mayor ROMAN S. GRIBBS (see Exhibit C of Appellant's accompanying Motion) in which action Appellant asked in so far as it is material to the instant action:

> a) That Appellees be restrained from interfering with Appellant's operation of business until items of particulars are furnished to the Appellant and a hearing had thereon.
>
> b) That the Court declare unenforceable and void Ordinance No. 147-G, Chapter 31, Article 1, Section 4 (See Exhibit E attached to Appellant's Complaint) as violative of the Fifth and Fourteenth Amendments to the United States Constitution and of the Constitution of the State of Michigan.

Within a week of the commencment of said suit, an informal agreement was entered into between Appellant and Appellees providing that the Appellees would not enforce the Order of

Revocation until the particulars were furnished and the hearing had. No order was entered by the Wayne County Circuit Court and no further action has been taken by either litigant in said suit. Appellees complied with the informal agreement.

(22) It is clear that the Federal rule does not bar commencement of a Federal suit during the pendency of a pre-existing suit in the State Court.

The rule is stated clearly in Ratner v. Paramount Pictures, Inc., et al., 46 F. Supp. 339, 340, wherein the Court at Page 340 finds from the opinion of Mr. Justice Cardozo in Landis v. North American Co., 299 U.S. 248, 254, 255, 57 S. Ct. 163, 166, 81 L. Ed. 153:

> ". . . the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weight competing interests and maintain an even balance. [citing cases] True, the suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay . . . will work damage to some one else. Only in rare circumstances will a litigant in one cause be compelled to stand aside

> while a litigant in another settles the rule of law that will define the rights of both. * * *"

In addition to this Federal action, Appellant seeks relief under the Civil Rights Act (Title 28, Section 1343, U.S.C. and Title 42, Section 1983 U.S.C.) and claims violation of its First Amendment rights complaining of matters which arose during and after the revocation hearings of October, November and December, 1971, and after the commencement of the State action on December 22, 1970.

(23) An action under the Federal Civil Rights Act cannot be maintained in the State Court and Appellant did not seek remedies under the First Amendment to the United States Constitution in its prior suit action. In addition, neither party has moved under the State action following the informal agreement entered into in December of 1970 nor in the language of Ratner supra, at Page 340:

> ". . . Nor does it appear that it would be more burdensome or expensive for the defendants to try the issues in the federal court than in the state court; or that separate preparation for both trials will be necessary, the issues being the same in both."

Neither litigant in the instant Federal action sought a stay, nor did the Trial Judge order one, nor does it appear that the exercise of sound discretion requires a stay of this Federal action.

(24) CONCLUSION

The Ordinances of the City of Detroit have empowered the Mayor to issue and revoke licenses to operate businesses in the City of Detroit. The provisions of the Ordinances which empower the Mayor to revoke the licenses set forth reasons for revocation based upon findings "in the best interests of the city and its inhabitants" and "for good and satisfactory reasons". It was by virtue of these powers that the Mayor revoked the concert hall license of the appellant herein who operated a concert hall wherein the Appellant expresses ideas and messages through music and lyrics.

A reading of the Ordinances discloses that on their face, they are unconstitutional in that they lack narrow, objective and definite standards. The Appellant seeks immediate relief from enforcement of the revocation of its license as a denial of its rights under the First Amendment to the United States Constitution, and in order to save its business from being destroyed during the pendency of this action. The Mayor in exercising his power commenced proceedings against the Appellant approximately one year ago and on December 10, 1971, revoked the license. During that period, Appellant was allowed to continue operating.

The giving of concerts and particularly "rock" concerts involves the presentation of messages and ideas by way of music and lyrics.

No one under the First Amendment has a right to suppress the conveyance of messages or ideas unless there is a clear and present danger to the community. The (25) arbitrary right granted to the Mayor of the City of Detroit to revoke a concert hall license gives the Mayor the right to determine what music, what ideas and what songs will be sung in the concert halls of the City of Detroit. This the Courts cannot and will not tolerate. The United States Supreme Court said in the case of Cox v. Louisana, 379 U.S. 536 (1965):

> "This Court has recognized that the lodging of such broad discretion in a public official allows him to determine which expressions of view will be permitted and which will not. This thus sactions a device for the suppression of the communication of ideas and permits the official to act as a censor. See Saia v. New York, supra 334 US at 562, 92 L ed at 1578. Also inherent in such a system allowing parades or meetings only with the prior permission of an official is the obvious danger to the right of a person or group not to be denied equal protection of the laws. See Niemotko v. Maryland, supra, 340 US at 272, 284, 95 L ed at 270, 277; cf. Yick Wo v. Hopkins, 118 US 356, 30 L ed 220, 6 S. Ct. 1064. It is clearly unconstitutional to enable a public official to determine which expressions of view will be permitted and which will not or to engage in invidious discrimination among persons or groups either by

use of a statute providing a system of broad discretionary licensing power or, as in this case, the equivalent of such a system by selective enforcement of an extremely broad prohibitory statute."

The urgency of Appellant's appeal for a preliminary injunction is obvious; the irreparable harm it will suffer by a denial thereof, forthwith, will render any future decision, when this case comes to trial, moot in that its business will have long been lost to it.

(26) RELIEF

Appellant prays that the United States Circuit Court of Appeals grant a temporary restraining order restraining the HON. ROMAN S. GRIBBS, Mayor of the City of Detroit, and JOHN F. NICHOLS, Police Commissioner of the City of Detroit, their agents, servants and employees and all those in active consort with them, from enforcing the revocation of Appellant's concert hall license until such time as a final determination has been made in this case by the lower Court, or following the appeal granted, direct the Trial Court to issue its injunctive order permanently restraining defendant Mayor from enforcing his revocation order.

Respectfully submitted,

LAMPERT AND FRIED

By: /s David M. Fried
DAVID M. FRIED
Attorneys for Appellant
20840 Southfield Road, Suite #320
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354-6090

DATED: December 23, 1971.
DATED: March 2, 1972, following the Order of the United States Court of Appeals for the Sixth Circuit of February 23rd, 1972, directing that this appeal be placed on the summary calendar.

"B"

NO. 72-1089
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EASTOWN THEATRE, INC.,
a Michigan Corp.
Plaintiff-Appellant

-vs-

ROMAN S. GRIBBS, Mayor and
JOHN F. NICHOLS, Police
Commissioner,,
Defendants-Appellees

ORDER REMANDING FOR
FURTHER PROCEEDINGS
FILED Oct. 26, 1972
JAMES A. HIGGINS, Clerk

BEFORE: CELEBREZZE, MC CREE and
MILLER, Circuit Judges.

The appeal from the denial of a motion for a preliminary injunction having come on to be heard, and it appearing that the stated reasons for the denial are based upon an erroneous view of the law with reference to the jurisdiction of the District Court and the doctrine of abstention,

and it further appearing that circumstances may have changed substantially since the disposition by the District Court before which the action still pends for determination on the merits, upon consideration, it is ORDERED that the cause be, and it hereby is, remanded for further proceedings without prejudice to reapplication for interlocutory relief. No costs.

Entered by order of the court

/s/ James A. Higgins
Clerk

"C"

SOOF v. CITY OF HIGHLAND PARK Mich 361
Cite as 186 N.W. 2d 361

N.W. 2d 254. The record in this case shows that the notice was filed; that is enough.

Reversed and remanded for a new trial.

Costs to plaintiff.

30 Mich. App. 400

Sam SOOF, Jr. and Ronald Mazellis d/b/a Uptown Book Store and Automated Vending Co., a Nevada corporation,
Plaintiffs-Appellants,

v.

The CITY OF HIGHLAND PARK, a municipal corporation, et al.,
Defendants-Appellees.

Docket No. 7264

Court of Appeals of Michigan
Div. 1.

Feb. 15, 1971

Released for Publication May 3, 1971

Action challenging constitutionality of ordinance requiring license for coin-operated motion picture devices. The Circuit Court, Wayne County, Joseph A. Moynihan, Jr., J., upheld constitutionality of ordinance and denied plaintiffs' application for license and plaintiffs appealed. The Court of Appeals, Bronson, J., held that ordinance limiting issuance of license for coin-operated motion picture machines to applicants found by city council to be "suitable persons," to have "good moral character" and to be "law abiding citizens" was unconstitutional on its face for lack of precision in that discretion bestowed upon authorities responsible for granting or denying license under ordinance was too profuse.

Reversed and ordinance declared unconstitutional.

186 N.W. 2d-23 1/2
Mich. Rep. 185-186 N.W. 2d-38

1. Constitutional Law 90

Any statute or ordinance which subjects exercise of freedom of speech or press to license

requirement must be suspect because of its possible "chilling" effect upon First Amendment rights. U.S.C.A. Const. Amend. 1.

2. Constitutional Law 90

Expression by means of motion pictures is included within First Amendment guarantees for freedom of speech and press. U.S.C.A. Const. Amend. 1.

3. Constitutional Law 90

Fact that communication may be conducted in business setting with a profit motive does not dilute constitutional protection afforded by First Amendment. U.S.C.A. Const. Amend.1.

4. Constitutional Law 90

Both motion picture operation and coin-operated movie machine are entitled to First Amendment protections. U.S.C.A. Const. Amend. 1.

5. Municipal Corporations 595, 597, 598

Municipality's regulations affecting exercising of First Amendment rights must have substantial relationship to public health, safety, morals or welfare. U.S.C.A. Const. Amend. 1.

6. Licenses 7(9)

Commercial entrepreneur can legitimately be subjected to license regulations which require reasonable and nonconfiscatory license fee to provide additional revenue to offset increased municipal expenses resulting from licensee's operation.

7. Licenses 7(1)

Municipal regulations which require that licensee's business premises comply with healthy, safety, and fire laws and which provide means for inspection to assure compliance would be deemed reasonable.

8. Municipal Corporations 591

Ordinance limiting issuance of license for coin-operated motion picture machines to applicants found by city council to be "suitable persons", to have "good moral character" and to be "law abiding citizens" was unconstitutional on its face for lack of precision in that discretion bestowed upon authorities responsible for granting or denying license under ordinance was too profuse. U.S.C.A. Const. Amend. 1.

9. Constitutional Law 90

Licensing ordinance which lacks precise standards and thus is incapable of objective measurement is inherently dangerous when

First Amendment rights are involved because exercise of the protected rights is made entirely dependent upon discretion of licensing authority so that situation becomes fraught with hazard that rights of expression will be unconstitutionally restrained. U.S.C.A. Const. Amend. 1.

10. Constitutional Law 82

Any ordinance or statute which provides prior restraint on First Amendment rights need precise standards, capable of objective measurement and standards must bear a reasonable relation to legitimate police powers. U.S.C.A. Const. Amend. 1.

Stephen M. Taylor, Losh, Losh & Taylor, Detroit, for plaintiffs-appellants.

George W. Moore, City Atty., Kalem E. Garian, Charles H. Novelli, Highland Park, for defendants-appellees.

Before LESINSKI, C.J., and BRONSON and ENGEL, *JJ.

BRONSON, Judge.

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*ALBERT J. ENGEL, Circuit Judge for the County of Muskegon, appointed by the Supreme Court for the hearing month of October, 1970 pursuant to Sec. 306 P.A. 1964, No. 281.

Sam Soof, Jr., and Ronald Mazellis are engaged in a business partnership under the name of Uptown Book Store, an establishment located in Highland Park, Michigan. Plaintiffs, in accordance with the city ordinance, applied for a license to install four coin-operated motion picture devices on their premises. The application for a license was denied by the City Council, and plaintiffs brought an action in Wayne County Circuit Court challenging the constitutionality of the ordinance. The circuit court upheld the constitutionality of the ordinance, as well as the denial of plaintiffs' application for a license. Plaintiffs appeal.

The ordinance** in question provides, in part:

> "AN ORDINANCE to license and regulate coin operated mechanical music devices and motion picture machines; the distributors and owners or proprietors of establishments where such machines are placed for operation, and to provide a penalty for the violation thereof.
>
> * * *
>
> "Section 4. * * * All applications when properly made and sworn to shall be filed with the City Clerk, and he shall promptly refer the same to the Chief of Police who

**Highland Park Ordinance No. 765.

Shall submit his written report and recommendation to the City Council within a reasonable time. If the City council is satisfied that the applicant is a suitable person to carry on the business for which a license has been requested; that the applicant has not been convicted of violating any of the provisions of this ordinance, the laws of the State of Michigan or the laws of the United States; has a good moral character and is a law abiding citizen, it shall authorize the issuance of the license applied for.

"Section 12. Any violation of or failure to comply with the provisions or requirements of this ordinance shall be punished by a fine not to exceed Five Hundred ($500.00) Dollars and costs of prosecution, or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment in the discretion of the court * * *."

The Highland Park City Council originally denied the plaintiffs' application for the following reasons:

"WHEREAS, The Council has concluded that the proposed location is not suitable for the placing of such machines, that persons under 18 years of age are permitted in the establishment and are likely to congregate there and use the machines; that the granting of the applications [for] such

machines, would add to the general blight and deterioration of the commercial businesses of the neighborhood; would be likely to encourage the congregating of groups of persons in and about the business, cause additional police problems and otherwise would be contrary to the health, safety and welfare of The City and the best interest of the people thereof".

At the initial hearing of plaintiffs' action in Wayne County Circuit Court, the court requested that the application be sent back to the Highland Park City Council pending a report and recommendation from the Chief of Police of that municipality. The report submitted by the Chief of Police recommended that the application be denied. Subsequent to the receipt of the officer's report, the City Council again denied the plaintiffs' action:

"Whereas, after due deliberation and consideration of all the factors concerned in the proposed licensing of 4 coin operated motion picture machines at the Uptown Book Store, 16541 Woodward Avenue, Highland Park, Michigan, it is the conclusion of this Council that the applications should be denied for the following reasons:

"(a) The applicant Sam Soof, Jr. has been convicted of a violation of the criminal statutes of the State of Michigan.

"(b) The nature of the business as presently conducted is conducive of [sic] assemblies of large numbers of loiterers in and about the premises, and has been the source of numerous complaints that persons of questionable moral character are attracted to the store and to the adjacent area.

"(c) That the premises presently fail to meet the health and safety requirements of the city and state, as set forth in detail in the report and recommendation of the Chief of Police, and the said premises constitute a fire and safety hazard, not only to the premises and persons therein, but to the surrounding adjacent premises.

"(d) That the Council is satisfied that the business as conducted is detrimental to the interests of the public.

"(e) That the addition of the proposed 4 coin operated movie machines would aggravate and increase all of the presently existing safety hazards and the problems of enforcement of the codes and ordinances of the city and laws of the state in and about the premises.

"Now, Therefore, Be It Resolved that the applications for coin operated amusement devices by Sam Soof, Jr., and Ronald J. Marzelas and Automated Vending Company be and are hereby denied."

Plaintiffs challenge the constitutionality of the ordinance, alleging inter alia that the ordinance is unconstitutionally vague, its standards arbitrary, and that it bestows unbridled discretionary power on the City Council in determining who shall and who shall not obtain a license.

The principal issues to be determined by this Court are whether a municipality is prohibited from requiring that a license be obtained before the installation of coin-operated motion picture machines; and, if no constitutional inhibition exists for the licensing requirement, whether the instant ordinance, as drafted, provides an unconstitutional restraint upon First Amendment rights of freedom of speech and press.

[1] Any statute or ordinance which subjects the exercise of freedom of speech or press to a license requirement must be suspect, because of its possible "chilling" effect upon First Amendment rights. See Staub v. City of Baxley (1958), 355 U.S. 313, 78 S. Ct. 277, 2 L. Ed. 2d 302. See, also, Anno: Right of Free Speech, 93 L. Ed. 1151, 1180, 2 L. Ed. 2d 1706, 1720; 11 L. Ed. 2d 1116, 1146; 16 L. Ed. 2d 1053, 1071; 21 L. Ed. 2d 976, 1008.

[2-4] It can no longer be questioned that expression by means of motion picture is included within the First Amendment guarantees of freedom of speech and press. Joseph Burstyn,

Inc. v. Wilson (1952), 343 U.S. 495, 72 S.Ct. 777, 96 L. Ed. 1098. Likewise, the fact that communication may be conducted in a business setting with a profit motive does not dilute the constitutional protection afforded these rights. New York Times Co. v. Sullivan (1964) 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686. In view of existing case law, it would seem to be an anomaly for this Court to attempt to distinguish a motion picture operation from a coin-operated movie machine. Both forms of expression are entitled to the mantle of First Amendment protections.

[5-7] The fact that plaintiffs seek to exercise First Amendment rights does not prohibit the municipality from imposing regulations under its police power. The regulations must, however, have a substantial relationship to the public health, safety, morals or welfare. The commercial entrepreneur can legitimately be subjected to license regulations which, for example, require a reasonable and non-confiscatory license fee to provide additional revenue to offset increased municipal expenses resulting from the licensee's operation. Likewise, regulations which require that the licensee's business premises comply with health, safety, and fire laws, and which provide means for inspection to assure compliance, would unquestionably be deemed reasonable.

Although some of the reasons presented by the City Council as the basis for denying plaintiffs'

application for a license might, if valid, be reasonably related to legitimate police powers, we note that few of the reasons are based upon the enumerated standards contained in the ordinance. Likewise, in view of testimony presented, as well as the lower court record, this Court cannot ignore the genuine concern illustrated by the City Council and the trial court regarding the type of literature presently sold by the plaintiffs at their bookstore, as well as the general content of the movies which plaintiffs intend to present in their coin-operated machines.

The United States Supreme Court has not been hesitant in declaring laws to be unconstitutional which restrict First Amendment rights without providing precise and objective standards to guide the authorities responsible for licensing the desired activity. E.g., Interstate Circuit, Inc. v. City of Dallas (1968), 390 U.S. 676, 88 S. Ct. 1298, 20 L. Ed. 2d 225; Staub v. City of Baxley (1958), 355 U.S. 313, 78 S.Ct. 277, 2 L. Ed. 2d 302; Cantwell v. Connecticut (1940) 310 U.S. 296, 60 S.Ct. 900, 84 L. Ed. 1213.

In Staub v. City of Baxley, supra, the Court stated, at 322, 78 S. Ct. at 282:

> "It is settled by a long line of recent decisions of this Court that an ordiance which, like this one, makes the peaceful enjoyment of freedoms which the constitution guarantees contingnt upon the uncontrolled will of an official--as by requiring

> a permit or license which may be granted or withheld in the discretion of such official--is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms." (Emphasis added.)

[8] In the area of First Amendment rights, "[p]recision of regulation must be the touchstone." NAACP v. Button (1963) 371 U.S. 415, 438, 83 S. Ct. 328, 340, 9 L. Ed. 2d 405. The standards set forth in the instant ordinance, such as "suitable person", "good moral character", and "law abiding citizen" reveal that the ordinance lacks the precision required of laws which have a restrictive effect upon First Amendment rights.

[9] A licensing ordinance which lacks precise standards, and thus incapable of objective measurement, is inherently dangerous when First Amendment rights are involved because the exercise of these protected rights is made entirely dependent upon the discretion of the licensing authority. As such, the situation becomes fraught with the hazard that First Amendment rights of expression will be unconstitutionally restrained. See Burton v. Municipal Court of the Los Angeles Judicial District of Los Angeles County (1968) 68 Cal. 2d 684, 68 Cal. Rptr. 721, 441 P. 2d 281.

It is unnecessary for this Court to consider the motives which induced the adoption of the instant ordinance. Suffice it to say that the ordinance, as drafted, lacks the precision

required of an ordinance which restrains protected First Amendment rights. The discretion bestowed upon the authorities responsible for granting or denying a license under this ordinance is too profuse to satisfy constitutional requirements. Nor, can the constitutional defects be overcome simply because the ordinance exists under the semblance of regulation of business activity.

[10] Having determined that the ordinance is unconstitutional on its face, we need not speculate as to whether the character of the plaintiffs or the condition of their business premises would be sufficient to warrant a denial of their application for a license under a properly-drafted ordinance. It is not within our province to draft legislation. We merely reiterate that any ordinance or statute which provides a prior restraint on First Amendment rights needs precise standards, capable of objective measurement. Additionally, the standards must bear a reasonable relation to legitimate police powers.

The judgment of the lower court is reversed and Highland Park City Ordinance No. 765 is declared to be unconstitutional on its face.

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STATE OF MICHIGAN

IN THE

SUPREME COURT

On Appeal From the State Bar
Grievance Board

Case No. 54257

In the Matter of

NEAL L. GROSSMAN, Appellant

VS.

The State Bar of Michigan, Appellee

Brief in Support of Oral Argument Before
Michigan Supreme Court on May 8, 1973

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STATE OF MICHIGAN

IN THE

SUPREME COURT

On Appeal From the State Bar
Grievance Board

Case No. 54257

In the Matter of

NEAL L. GROSSMAN, Appellant

VS.

The State Bar of Michigan, Appellee

Brief in Support of Oral Argument, To Reverse Decision of State Bar Grievance Board

INTRODUCTION

The only questions raised by Appellant in his appeal before this Honorable Supreme Court are NINE issues uncontested and unanswered by the State Bar Grievance Board.

The very foundations of proper legal procedure and due process of law are the concerns of these hearings. And rightly and justifibly so.

No question concerning the guilt or innocence of Appellant was raised before this Honorable

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Court. Correctly or incorrectly, the decisions of two State Bar hearing panels have already been handed down, and the Court is aware of them.

What the Court has been asked to consider on Appellants appeal are NINE issues resulting from these hearings which are significantly broad enough in their scope in concerning the relationship of practicing attorneys with the State Bar of Michigan to merit this Honorable Supreme Court's consideration and adjudication.

It is my personal feeling that throughout the machinations of the State Bar Grievance Procedure, I have suffered grieviously. And although the resulting disciplinary action was an official reprimand, I sincerely believe that it is my sacred duty and obligation as an attorney to bring the resultant questions here before this Honorable Court today so that they might be examined fully in the light of justice.

Now from what we have seen of the State Bar's answer to this appeal, we can expect from them

not only the re-opening of this case, from its beginning but, even, astonishingly enough, in an appeal proceeding, the posing of New Charges against myself as respondent before this Honorable Court.

All this, of course, being an effort to prove my guilt and the correctness of their original charges once and for all. And if this be the case, I can only state to them before this Honorable Court today that the State Bar's learned counsel is here in the wrong Court, at the wrong time, in the wrong proceeding, and is championing the wrong issue. For as I have said, at the outset,

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the relevancy of the guilt or innocence of the actions charged is not a proper issue here. . . . That, having already been decided at the hearing panel level.

Now, what we have to deal with as the outcome of those decisions are nine basic issues, the legality of which must and should be decided, since they relate to the encompassing issue of individual rights versus state powers and rights.

ARGUMENT

ISSUE NO. I. Number brought before this Honorable Supreme Court was:

CAN THE STATE BAR ISSUE A REPRIMAND TO AN ATTORNEY BASED UPON INADMISSIBLE EVIDENCE AND LACK OF A PREPONDERANCE OF PROOF?

Clearly, the answer is NO.

The Appellant contends that this issue is governed by the ruling in Chapman v. California (1967) 386 U.S. 18, 87 S Ct. 824, 17 L.Ed. 705 and cited with approval in Re Woll (March 3, 1972) 194 NW 2d 835, 840 in that the State Bar has the duty to demonstrate beyond a reasonable doubt that the submission of police reports (State Bar Exhibits 1, 2, 3 and 4) for the purpose of proving the truth of the matter asserted or the alleged statement of respondent was harmless error.

The counsel for the State Bar Grievance Administrator admitted the police report which is inadmissible evidence (State Bar Exhibit #2) over the objection of respondent to prove the

alleged erroneous statements to the police. This amounts to prejudical error because the hearing panel was influenced and relied upon it. (Tr. Wednesday, October 13, 1971, page 145:) (109a)

First: Counsel for State Bar Grievance Administrator relies heavily if not solely on the police report (Tr. see June 23, 1972 before State Bar Grievance Board, page 27:)(116a)

"Mr. Rosenzweig: Not in the police report. I am talking about the police report.

Second: Because the counsel for the State Bar Grievance Administrator arrogantly refuses

to recognize the most recent rulings of the Honorable Supreme Court In Re Woll (March 3, 1972) 194 NW 2d 835, 840 interpretation. Chapman v. California (1967) 386, U.S. 18, 87 S. Ct. 824, 17 L. Ed, 2d 705 at pp 23, 24, 87 S. Ct. 824 17 Ed 2d 705 to hold that the prosecution must demonstrate beyond a reasonable doubt that any error which occurred was harmless error.

ISSUE NO. II is where or not

THE STATE BAR ISSUE A REPRIMAND BASED UPON THE ESTABLISHMENT OF AN "AFTER THE FACT" STANDARD?

Again the holding is NO.

Appellant relys upon In Re Ruffalo (October Term 1967) 390 U.S. 544 for the principle of law that even attorneys are entitled to fundamental fairness, reasonable warning, specific

standards and substantive due process of law. In the language of U.S. Supreme Court Judge Byrone White:

"Appraisal of Petitioner's conduct is about which reasonable men differ, not one immediately apparent to any scrupulous citizen who confronts the question. I would hold that a Federal Court may not deprive an

attorney of the opportunity to practice his profession on the basis of a determination after the fact that first conduct is unethical if responsible attorneys would differ in appraising the propriety of that conduct."

Respondent's second grounds for reversal is the standard applied was an after the fact standard, and a vague one giving Respondent no prior notice or guide and in fact applying the Common Law negligence standard of reasonable attorney instead and any recognized breach of duty to ones client, the court or to his professional brethren.

In Re Ruffalo (October term 1967) 390 U.S. 544, held that Lack of Notice to Petitioner, prior to the time he and Orlando testified, that petitioner's employment of Orlando would be considered a disbarment offense deprived petitioner of procedural due process. A lawyer charged with misconduct in a disbarment proceeding is entitled to procedural due process, which includes fair notice of the charge. Justice Douglas delivered the opinion of the Court In Re Ruffalo Certiorari to the United States Court of Appeals for the Sixth Circuit denied (April 8, 1968) 390 U.S. 544, 550 stated "In the present

case petitioner had no notice that his employment of Orlando would be considered a disbarment offense until after both he and Orlando had testified at length on all material facts pertaining to the phase of the case. As Judge

Edwards, dissenting below, said, "such procedural violation of due process would never pass must in any normal civil or criminal litigation". 370 F 2d at 462

These are adversary proceedings of a quasi-criminal nature.

In Re Gault 387 U.S. 133 the charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis testimony of the accused -- He can then be given no opportunity to expunge the earlier statements and start afresh.

State Bar Grievance hearing June 23, 1972 transcript, page 26: (115a)

> Mr. Rosenzweig: "Now, I submit to you, gentlemen, is this the action of a responsible lawyer, . . ."

Respondent's position is that the misconduct which an attorney is accused of committing has to be misconduct which is clearly violative of legal ethics. This is spelled out in (Tr. 18-21) (111a, 112a, 113a). In Re Ruffalo, where the court held an attorney is entitled to procedural due process, and in discussing the matter in the case, in general, it held basically that an attorney couldn't be held to standards which are established after the facts.

What we have in this case, it is clear that an attorney like any other citizen is entitled to report a crime. It is clear that any citizen in the community is immuned as long as his report of a crime is made in good faith, even if it turns out to be factually false.

What we have in this case the Bar, in effect, is saying that where an attorney has two remedies, one criminal and one civil, that he must resort to the civil remedy.

I know of no such Canon of Ethics, I know of no such standard, and I think it is clearly in error and unconsitutional for the Bar Association at this late date, that is, after the event has occurred, to say that this is the standard, that in a situation like this or like any other, I suppose where an attorney has both the civil and criminal remedy, that he must resort, like any other citizen, to civil remedy. Not only is it a denial of the "protection", but it is also a denial or procedural due process, first of all, because (see the following quote)

> "I don't think that is exactly what the Bar means. It is hard to tell exactly in which situations an attorney must resort to civil remedies and when he can't afford himself of a criminal remedy. I suppose if an attorney was assaulted with a deadly weapon, he could probably, with the blessings of the Bar, report the assault to the police and proceed

civilly, if he wished. The standard is vague. It does not afford attorneys in advance a warning of what their action, what action would be violative of Bar Standards and, as
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such, denies the attorney procedural due process which is guaranteed to him in the case of In Re Ruffalo.

In Re Ruffalo involved a situation involving a FELA Attorney, an attorney who dealt with FELA cases in which he had an arrangement for the referral of cases, which he admitted very openly and clearly, and defended as legal and it was only after all the testimony was in that the State Bar that was involved in that particular case decided that that conduct on the part of that attorney was misconduct.

The Supreme Court indicated that the Bar Standard was, one, too vague, and more importantly, that it wasn't priorly announced. The attorney had no way of judging.

In this case it is our contention that this standard, that is, that an attorney commits misconduct when he enforces a remedy with the use of the police when he can enforce it civilly is certainly too vague. If it means exactly what it says, it is certainly a denial of equal protection. Certainly, the Bar can't really mean that somebody who is assaulted with a deadly weapon can't go to

the police. If it doesn't mean exactly what it says, then the standard at which point a crime is serious enough to allow an attorney to go to the police and where it is not serious enough so that the attorney has to proceed civilly is too vague and denies procedural due process.

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In summary, In Re Ruffalo said that not only should have the defendant in that case been given prior notice of what the charges were, but that, as a matter of fact, the charges themselves were unclear -- they were vague, and they couldn't stand as a basis for disciplining that attorney. As a matter of fact, in that particular case there was no prior basis in Ohio for finding that particular practice which was his was in any way misconduct. . . .

We do have the situation where the Bar Grievance Administrator has called Mr. Grossman to see whether or not his actions were the actions of a reasonable attorney. And that is what the bar is doing, they were violating procedural due process and substantive due process and they are abusing their discretion.

The only real question is DID Mr. Grossman Commit Misconduct, misconduct of a type which was clearly known to him, not of a standard which was too vague or overdrawn, but of a clear, precise standard?

IN CONCLUSION, the fact that Mr. Grossman chose to enforce a remedy which was available to him civilly by reporting to the police is not misconduct. To say that it is misconduct is a denial of due process and the application of a constitutionally vague and indefinite standard."

Respondent contends that Issue II is also governed by the principle of law announced in 10

Garrity v. State of New Jersey (Jan. 16, 1967) 385 U.S. 493, 17 L. Ed 2d 562, 87 S. Ct. 616 holding "that police like teachers and lawyers are not relegated to a watered down version of Constitutional Rights." Garrity was a police officer who choice imposed on him was one between self-incrimination or job forfeiture. Justice Douglas delivered the opinion of the court holding that the Fourteenth Amendment -- No person shall be denied equal protection of the law and due process of the law means every citizen entitled to the same rights, privileges and immunities irregardless as to the status in life.

It is Respondent's position that the State Bar erred in attempting to create a different standard for attorney rights, privileges and immunites which is not permissible under Constitutional Law. In creating the after the fact standard of resorting to law enforcement officers for assistance with civil remedies were

readily available creates an impermissible classification of rights and amounts to invidious discrimination against the rights, privileges and immunities of attorneys.

The THIRD ISSUE which this Honorable Supreme Court is being asked to decide in this appeal hearing is:

CAN THE STATE BAR REPRIMAND AN ATTORNEY FOR AN ACT WHICH IS IMMUNE UNDER MICHIGAN LAW?

HOLDING: No.

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Notwithstanding, and regardless of his assessment of whether the retention of his car was a conversion or a prank, appellant's reporting of either opinion to the police is clothed with immunity as a matter of law. Simpson v. Burton (October 2, 1950) 328 Mich 557, 44 NW 2d 178 180. "Under the Michigan Law, one who merely gives information regarding an offense does not incur liability for alleged arrest and detention without probable cause, though the party giving the information acted maliciously or without probable cause.

"It is the holding in Simpson v. Burton, the law of Michigan that one who merely gives information regarding an offense does not incur liability, even though the party giving the information acted maliciously or without probable

cause. Poupard v. Dumas 105 Mich 326, 63 NW 301, Shinglemeyer v. Wright 124 Mich 230, 82 NW 887, 50 L.RA 129 -- this seems to accord with the general rule, Burlington Transportation Co. v. Josephson, 8 CIR, 153 F 2d 375 and Richardson v. Empire Trust Co. 230 MO. App. 580, 94 S.W. 966. Carr v. National Discount Corporation, 6 CIR 1949, 172 F 2d 899, 902.

In addition to the fact that under Michigan Law anything said in good faith, is privileged and immuned under Simpson v. Burton and Appellant is entitled to equal protection of the law -- under Garrity v. State of New Jersey (Jan. 16, 1967) 385 U.S. 493, 17 L Ed 2d 562, 87 S. Ct. 616 holding: "that police like teachers and lawyers are not relegated to a watered down version of Constitutional Rights". The State of Michigan has the duty to recognize constitutional rights of

attorneys and other citizens and allow reasonable exercise of those rights and not disregard the true preponderence of the evidence in favor of Respondent that he was a victim of a Larceny by Conversion over $100 -- a felony -- nor deny him Freedom of Speech to "Chill" his Right to orally communicate to the police in an effort to recover his own personal automobile which at the time was being held contrary to his earlier demand the same day for return: United Transport Union v. State Bar of Michigan (April 5, 1971) 91 S Ct 1076, 1078 citing NAACP v. Butler 271 U.S. Att 438, 544, 83 S. Ct. at 340.

State must not give attorneys' rights, privileges and immunities the narrowest possible reading.

ISSUE NO. IV, is:

CAN THE STATE BAR REPRIMAND AN ATTORNEY FOR AN ACT OR CONDUCT TO WHICH EVERY OTHER CITIZEN IS PRIVILEGED:

HOLDING. No.

Argument:

The Respondent relys on the law stated by the Supreme Court of Michigan in Simpson v. Burton (October 2, 1950) 328 Mich 557, 44 NW 2d 178 for the proposition that the reporting of a crime to police is privileged and immuned from prosecution and that police reports are incompetent as substantive proof of the matters related by the complainant to police.

The Supreme Court, Reid, Justice, held that where mother reported to police the circumstances and her belief that one of Plaintiffs

had attempted to poison her baby and belief in the complicity of one of the other plaintiffs, trial court erred in excluding police record since it was competent to show what information officers acted upon in taking plaintiffs into custody, although record was incompetent as substantive proof of the matters related by mother to police.

In this case, the Counsel for State Bar Grievance Administrator admitted police reports (State Bar Exhibit #2) over the objection of Respondent to proof the alleged erroneous statements to the police.

The order of discipline amounts to invidious discrimination by classification of attorneys' civil rights as different from other citizens and by denying Respondent the rights, privileges and immunities guaranteed, protected, and incorporated by reference to the Fourteenth Amendment in violation of Respondent's Right to Equal Protection of the Law of the State of Michigan -- to wit: The mere oral reporting of an incident to law enforcement agencies is privileged and immune from prosecution under Michigan law. Simpson v. Burton (Oct. 2, 1950) 328 Mich 557, 44 NW 2d 178.

Respondent relys upon Wilcox v. Morton (1902) 132 Mich 63, 92 NW 777 for the proposition that self-help is sanctioned conduct even if a technical error is made as long as no breach of the peace or violence occurs.

Therefore the order of affirmance must be reversed on the grounds that it denies Respondent equal protection of the Laws of the State of Michigan.

ISSUE NO. V which merits this Honorable Supreme Court's most serious consideration is:

CAN THE STATE BAR OF MICHIGAN RESTRICT AN ATTORNEY'S FIRST AMENDMENT RIGHTS UNDER THE MICHIGAN AND U.S. CONSTITUTION?

HOLDING. No

Respondent contends that Issue V is given by the law defined in United Transport Union v. State Bar of Michigan (April 5, 1971) 91 S. Ct. 1076, 1078 citing NAACP v. Button 271 U.S. at 438, 544, 83 S. Ct. at 340 holding that the State of Michigan has the duty to recognize constitutional rights of attorneys and other citizens and allow the reasonable exercise of those rights and not disregard the true preponderance of the evidence in favor of Respondent that he was a victim of a larceny by conversion over $100 -- a felony and not to give his rights, privileges and immunities the narrowest possible reading -- see State Bar Grievance Board, hearing on Friday, June 30, 1972, transcript page No. 17.

IN SUMMARY, the order of discipline based upon oral communication to the Novi police in an effort to recover Respondent's own personal automobile which at the time was being held contrary to his earlier demand that same day for return from an irrate client, violates Respondent's

First Amendment right to Freedom of Speech -- while any infringement on First Amendment Rights must be looked upon as suspect, the finding of misconduct and the order of discipline for the mere oral reporting of a crime actually committed against Respondent which is immuned under Michigan Law, does not present a cause for charges of misconduct, and amounts to arbitrary, capricious State Bar action, contrary to the Standards required by the United States ex rel Marcial 247 F 2d 66, 669 (? 1957) Court denied 355 U.S. 915 (1958)

> "We must not play fast and loose with basic Constitutional Rights in the interval of administrative efficiency."

The performance of the counsel for the State Bar Administrator after he discovered that the Complainant was an unlawful converter and Respondent a victim of the larceny and his basic assumption that Complainant had a "Mechanics Lien" on Respondent's automobile was erroneous, lacks any degree of integrity, truthfulness, candidness or fairness. Either Rosenzweig's conduct was due to his incompetence or his complete lack of personal ethics. A prosecutor's major duty is to seek justice not just convictions.

Nevertheless, Respondent with the greatest degree of integrity has suffered great personal, financial and emotional strain to defend his rightful position.

ISSUE SIX asks the question:

CAN THE STATE BAR EXCEED ITS JURISDICTION REGARDING THE APPLICATION OF LEGAL ETHICS?

Clearly the answer is NO.

Respondent contends that issue Number VI is governed by the Black Law Dictionary definition of legal ethics:

> "Usages and customs among members of the legal profession involving their moral and professional duties toward one another, toward clients, and towards the courts".
>
> "That branch of moral science which treats of the duties which a member of the legal profession owes to the public, to the court, to his professional brethren and to his clients." (Kraushaar v. La Vin, 42 N.Y.S. 2d, 857, 859, 181 Misc. 508).

In Summary, no evidence was presented of any acts of ethical misconduct against respondent's client, the court or to the public, or to his professional brethren in that none of these parties were involved in the incident alleged.

The SEVENTH ISSUE presented for this Honorable Court's adjudication is:

CAN THE STATE BAR OF MICHIGAN WHICH HAS SET A PREPONDERANCE OF EVIDENCE STANDARD IN ISSUING REPRIMANDS FAIL TO DELINEATE SUCH PREPONDERANCE OF EVIDENCE IN FINDING FOR A SPECIFIC REPRIMAND?

HOLDING: No.
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Appellant states that the order of discipline fails on its face to delineate any specific findings of what constituted the preponderance of evidence, was the preponderance the way Respondent combed his hair, the color of his eyes, the smile on the face? No where in the Language of the Order of Discipline does it delineate the specific language testimony or other evidence which constitutes and supports the conclusion of the Hearing Panel that the State Bar "proof" their case by "a preponderance of the evidence". What evidence? -- the Decree must constitutionally relate specifically and exclusively to the pleadings and proof. What oral testimony, exhibits, conduct and demeanor amounts to "a preponderance of the evidence"?

The order of discipline based upon the mere oral reporting of a crime which in fact had been committed against Respondent violates his First Amendment Right to Freedom of Speech:

Justice Black giving the majority opinion of the court.

"A decree must relate specifically and exclusively to the pleadings and proof. If not so related, the provision, because of its vagueness will jeopardize the exercise of protected freedom. This injunction like a criminal statute, prohibits conduct under fear of punishment. Therefore, we look at the injunction like we look at a statute, and if upon its fact it abridges rights guaranteed by the first amendment, it would be stricken down".

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United Transport Union vs. State Bar of Michigan (April 5, 1971) 91 S Ct. 1076, 1078 citing NAACP vs. Button 271 U. S. at 438, 83 X Ct. at 340. United Transport Union vs. State Bar of Michigan (April 8, 1968) 390 U.S. 544 which holds that decree must relate specifically and exclusively to the pleadings and proofs and must not abridge rights guaranteed by the First Amendment.

The EIGHTH ISSUE brought before this Honorable Supreme Court is:

CAN THE STATE BAR VIOLATE THE SUPREME COURT RULE OF CONFIDENTIALITY (RULE 15.28) BY RELEASING DETAILS OF A CASE TO THE DETROIT FREE PRESS BEFORE THESE DETAILS COME OUT IN A PUBLIC HEARING?

HOLDING: No.

Appellant contends the State Bar proceedings not only deprived Appellant's of equal Protection of the Laws (Simpson v. Burton, (October 2, 1950) 328 Mich 557, 44 N.W. 2d 178) but the publicity release, appearing in the Detroit Free Press, on Wednesday, September 29, 1972, (Appendix page 126a) (Exhibit 1 herein) placed Respondent in a false light and injured his reputation. Contrary to the Procedural and Administrative Rules of the State Bar Grievance Board (Rule 15.28 now 16.28) information was released to the press before there were any reports, findings, recommendations, disciplines, reprimands, transcripts or orders resulting from such hearings, depriving Respondent of subsequent fair hearing and invaded his Constitutional Right to Privacy -- Griswold v. Connecticut (decided June 7, 1965)

381 U.S. 479, 14 L ed 2d 510, 85 S.Ct. 1678 (see Respondent's exhibit of the Detroit Free Press article dated Wednesday, September 29, 1971 and Order of Discipline dated March 31, 1972). Also, in Ralph Nader v. General Motors Corporation, 57 Misc 2d 301, 292 NYS 2d 514 (1968) Mr. Justice Joseph A. Burst of the Supreme Court of the State of New York, County of New York held squarely that there is a Constitutional Right to Privacy -- a right to be left alone -- under the Fourth, Fifth and Fourteenth Amendments to the Federal Constitution.

IN CONCLUSION, Respondent pursuant to Article 6, Section 28, of the 1963 Michigan Constitution appeals as of Right from the Order of Affirmance dated July 6, 1972 of the State Bar Grievance Board and Respectfully prays for exonerating of the charges because no breach of duty to ones clients, the Court or his brethren is even alleged.

The matter is personal, privileged and immune as a matter of Michigan Law, equity, good conscious, justice and fairness.

EXHIBIT I 21

The grand jury is empowered to charge persons with crimes based on evidence presented to the jury.

DETROIT FREE PRESS 9/29/74

2 Hearings Air Disbarment Cases

Disbarment hearings began Tuesday for a Hamtramck attorney charged with embezzlement and a Southfield lawyer accused of making a false police report.

Robert F. Golen, once in line for appointment as a municipal judge in Hamtramck, was accused by the State Bar Grievance Board of failing to account for $40,037 from two accounts he administered.

RICHARD H. SENTER, State Bar grievance administrator, said in a petition that Golen converted to his own use or otherwise improperly used $13,153 from an estate for which he was appointed to be special administrator in 1967.

The petition also alleges that Golen, 34, is responsible for a shortage of $31,601 insurance money that was supposed to be paid to Daniel Bordas, owner of Danny's Gin Mill Chop House. The Detroit restaurant burned down April 15, 1970.

Golen was charged with the crime of embezzlement last March on a complaint by Walter A. Panik, for whose law firm Golen had worked. Trial is scheduled for Nov. 17 in Detroit Recorder's Court.

Before his arrest, Golen was a prime candidate for appointment to fill a vacancy created when a municipal judge, the late Rudolph Maras, was suspended from law practice.

Golen was acting as his own attorney at Tuesday's State Bar hearing before a panel of attorneys.

A second bar grievance panel took testimony during a hearing for Neal L. Grossman, a Southfield attorney who is accused of falsely telling the Novi police that his car had been taken from his home Jan. 30 without his consent.

The grievance board alleges that the car had not been at Grossman's home that day, but was being kept at a mechanic's garage for non-payment of a repair bill.

Lastly the Supreme Court is being asked to decide:

CAN THE STATE BAR OF MICHIGAN COUNTERMAND THE SUPREME COURT AS TO QUASI-CRIMINAL NATURE AND USE REASONABLE MAN STANDARD OF CONDUCT AS IN NEGLIGENCE LAW RATHER THAN THE MORE PRECISE STANDARD OF ACTUAL NOTICE AND FAIR NOTICE OR WARNING OF THE PRESCRIBED CONDUCT AS REQUIRED BY FUNDAMENTAL FAIRNESS AND SUBSTANTIVE DUE PROCESS OF LAW?

HOLDING: No.

Respondent's position is that the counsel for the State Bar Grievance abused his discretion and mislead the hearing panel and the State Bar Grievance Board in applying a negligence standard to the proceedings and disregarding the criminal nature which in fact these are. In support of Respondent's position, Respondent cites the transcript before the State Bar Grievance Board on Friday, June 23, 1972, page 34: (117a)

Mr. Rosenzweig:

"Now, the question is: What kind of a proceeding is a State Bar proceeding in discipline? Is it a criminal case? No, obviously it is not criminal because the Respondent cannot be punished by being incarcerated.

"The courts have said, and generally as dicta, that a disbarment proceeding is in the nature of, not that it is, but it is in the nature of a quasi-criminal matter."

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Mr. Rosenzweig (on page 35):

"But that the testimony does not have to be such as to establish beyond a reasonable doubt the guilt of the Respondent. Now, it is my contention, and I am going to insist on it and I am going to insist upon it before the Supreme Court in all the cases that I have, that under the rules of this Court, of our Supreme Court, and under the decisions of the Supreme Court in Attorney General versus Lang and in In Re Buck, that these are civil proceedings and not in the nature of criminal proceedings or quasi-criminal proceedings, and if an examination of the rules is carefully made, we will see that all through the tenor of these rules, the rules relate to proceedings to be followed, the general court rules of civil procedure. The Respondent is required to testify, to be present, and to testify if he is called to testify. Now, obviously in a criminal case the Respondent cannot be compelled to testify. Everything involved in the rules relating to disciplinary proceedings and everything involving the amount of doubt, the quantum of

proof, rather, in this case, is that it should be certain that the Respondent committed an offense, and I must insist that under this transcript and under this testimony, under this record, that the Respondent did commit an offense in giving a false report to the Police Department."

Mr. Rosenzweig: (page 22)

"The problem with my brother's argument is this: Number one, there was no question

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that there is no larceny in this case. Now, how Mr. Grossman could come to a Police Department and say that his car was taken, even by larceny or conversion, criminal conversion, is impossible for me to understand."

Mr. Rosenzweig: (page 26 & 27) (115a, 116a) -- emphasis added:

"NOW, I SUBMIT TO YOU, GENTLEMEN, IS THIS THE ACTION OF A RESPONSIBLE LAWYER? First, he makes a report that the car was taken from him by a prankster, naming the prankster as Bruce Parmenter. Then he says, after --

MR. WATSON: No. He named him as Kohalisky, didn't he?

MR. ROSENZWEIG: Not in the police report. I am talking about the police report.

MR. DAVIS: Let's stick with Grossman's testimony, if we can.

MR. ROSENZWEIG: No. Grossman doesn't say that Parmenter took his car, no.

MR. WATSON: No.

TR. - State Bar Grievance Board, June 23, 1972, (page 36) Mr. Rosenzweig: (119a)

"Now, I insist, members of the Board that Mr. Grossman . . . You can't have a conversion when you give the car to the man yourself, how is it converted?

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TR. - State Bar Grievance Board, June 23, 1972, (page 37) Mr. Reosti: (119a, 120a)

"(37) . . .

I say, members of the Board, that there was absolutely no justification for Mr. Grossman's attempt, who is a lawyer, to use the Police Department to make a false report as he did in this case, and that he is very properly disciplined by the hearing panel.

VICE-CHAIRMAN BARNES: You have seven minutes.

MR. REOSTI: I will try to make it quick. It is interesting that when lawyers get together, they always say, 'Well, lawyers should certainly know this,' and then they all disagree as to what they should know. I certainly disagree with Mr. Rosenzweig, that there was no conversion, criminal conversion, made in this case.

It seems incredible to me, but maybe I am wrong, that Mr. Rosenzweig would say that you can't have a conversion without a wrongful taking. I think that is the difference between a conversion and a robbery or a theft or a larceny. It is exactly the lawful taking and the unlawful keeping that defines conversion and, as a matter of fact, I think there was a conversion in this case.

(38) (120a, 121a) I hope I don't face a similar situation, but I think it also indicates that there was a basis, a very legitimate basis, for

Mr. Grossman to make a criminal complaint. Let me just proceed quickly to a couple of other points.

Whether or not the test is beyond a reasonable doubt -- I have cited the case In Re Woll. I think that is what the court says. It says very specifically that the Bar must show beyond a reasonable doubt that no prejudice was caused and it is obvious that that is

the test that is applied in these disciplinary and disbarment proceedings. I don't see how one can escape it. The fact that Mr. Rosenzweig doesn't accept that and that he will continue to insist even into the Supreme Court that these are civil cases, I don't think changes the law. Nor does, very frankly -- I mean no disrepect to the Bar, but, very frankly, it doesn't really matter what the Bar thinks these cases are, whether they are civil or quasi-criminal. I think the courts have spoken, not only our courts, but the U. S. Supreme Court, and they have made it very clear.

Lastly, I just wanted to briefly touch on what In Re Ruffalo says. I agree with everything that Mr. Rosenzweig said. I think his summary of the case is (39) (121a, 122a) very concise, very clear, all except for his last statement, and that is that that was all that the Court said. That is not all that the Court said.

The Court also said that not only should have the defendant in that case been given prior notice of what the charges were, but that, as a matter of fact, the charges themselves were unclear. They were vague, and

they couldn't stand as a basis for disciplining that attorney. As a matter of fact, in that particular case there was no prior basis in Ohio for finding that that particular practice

which was, as I understand it from reading that case, quite common in Ohio, was in any way misconduct.

To make the circle complete, I think that is exactly what we have in this case. We don't have the situation where the Bar has called Mr. Grossman to see whether or not his actions were the actions of a reasonable attorney. And that is what the Bar is doing, they are violating procedural due process and perhaps substantive due process and they are really acting beyond their province.

The only real question is: Did Mr. Grossman commit misconduct, misconduct of a type which was (40) (122a, 123a) clearly known to him, not of a standard which was too vague and overdrawn, but of a clear, precise standard? We would concede that if, indeed, Mr. Grossman did make a false and malicious report, something which perhaps almost amounts to a criminal offense in and of itself to the police, that he would be guilty of misconduct.

The fact that Mr. Grossman chose to enforce a remedy which was available to him civilly by reporting to the police is not misconduct. To say that it is misconduct is a denial of due process and also I think otherwise you get into a vague and indefinite standard.

Finally, did Mr. Grossman make a false report? His testimony is that it isn't. Mr. Rosenzweig relied heavily on the police report. I don't think the police reports are admissible. I think that is made clear, that they can't be admitted for the purpose of showing what Mr. Grossman said. The only thing that is admissible for that purpose is the testimony of the officers. The testimony of the officers is very unclear and not only is it unclear, but when one reads the testimony of the officers, and combined with the very frank testimony of Mr. Grossman, which Mr. Rosenzweig characterizes as that (41) (123a) of an unreasonable attorney which may or may not be so, I don't think that is relevant, nevertheless when one compares the two groups of testimony, that of Mr. Grossman and that of the officers, one can really see what really did happen here and that is that the officers misunderstood what happened.

How did Mr. Parmenter get in there? How did the police officers deduce that Mr. Grossman had said that Mr. Parmenter had taken his car? Very clearly, it was on his property. Not hard to figure that out.

Was there proof beyond a reasonable doubt that he had made a false report? Given all the testimony, clearly not. The officers

themselves, on their own police report, indicate that this police report was one of a civil nature, that there was a report of a civil case. This is obviously a policy which they follow in situations where they don't

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want to intervene and perhaps shouldn't intervene. The officers at the time they wrote the original report didn't even consider it as a report of a crime.

Their later testimony was, as I say, inconsistent, confused, and really not terribly hard to, when one looks at it and looks at the testimony of Mr. (42) (124a) Grossman, it is not hard to figure out what really did happen.

What really did happen was that Mr. Grossman did not make a report, a false report of a crime, that Mr. Grossman tried to tell the police officers in the best way he could what happened. In fact, if we take Mr. Grossman's statements, the original, first statements that he made to the police, they were that he would like them to help him recover the car which he had a right to and that, indeed, there was no crime committed and that he refused, and this the police officers admit, to file a stolen car report.

In other words, the one thing that we can rest assured on that is clear and definite in this record is that Mr. Grossman, when he really had an opportunity to make a really false report, absolutely refused, that he did not make a false report and he refused to make a false report.

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CLOSING ARGUMENT

Again these are the only issues being raised before this Honorable Court.

The violations of these legal principals, justify reversible error - the question is not whether respondent is guilty or innocent!

But even while their questions were being spawned by the State Bar proceedings, objections in the form of Motions to strike were raised concerning the following:

1. The failure of counsel for State Bar to file original brief as agreed to and order to by the Hearing Panel.

2. Failure to file written brief and appendix within time limit set by Supreme Court.

3. Failure to follow form of Brief and Appendix as requires MGCR 814.1.

4. The failure to formulate a proper and correct counterstatement of the issues being brought before this Court on appeal.

5. The presumptious placing of new questions and charges against respondent - which had never been placed before any hearing panel or Court to date.

6. The making of patently false statement with intent to mislead and deceive prejudice this Honorable Court against Respondent.

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7. The failure to include in its brief and appendix for the Court's examination an exhibit 2 - police report which respondent claimed was inadmissible and yet to which important reference was made in Bar's brief and appendix.

8. This Court should not be deceived by the misleading citation and authorities such as Hall V American Investment - where one used the law to collect a debt rather as in the Case at Bar - where a larceny by conservation was committed against respondent and he was attempting to report this crime to the police. It doesn't matter how poorly said crime was reported or evaluated or even if falsely reported as long as a crime was committed or existed!

SUMMARY AND RELIEF

The Bar's assumption that Kohalisky has some right to my car and the Bar had gone to ridiculous and unethical lengths to prove their case, and hid initial error which good legal knowledge and research would have disclosed that the complainant against respondent was a felonious converter as a matter of law. And yet, the State continued to defend its initial mistake and untenable position. That the championing of a felonious cause against a brother attorney. Is it not the first duty of a prosecutor to seek justice not convictions?

WHEREFORE, APPELLANT PRAYS THAT if any one of the NINE issues are meritorious then the lower order must be reversed - as violative of the 14th Amendment.

Respectfully submitted,

NEAL L. GROSSMAN

"E"

STATE OF MICHIGAN
SUPREME COURT

In the Matter of
NEAL L. GROSSMAN, a Member of the State Bar of Michigan,
Respondent.

#4/May 1973
No. 54,257
Filed Oct. 17, 1973

BEFORE THE ENTIRE BENCH
WILLIAMS, J.

Neal Grossman, respondent, is a member of the bar. He has represented Nicholas P. Kohalisky, operator of an automobile repair shop, since 1970 on an arrangement of doing legal work in return for services to respondent's automobile. Needing some work done on his car, respondent called Kohalisky to come and pick up his car in Southfield. He gave Kohalisky the keys and Kohalisky took the car back to his service shop in Novi on January 24, 1971. After several calls back and forth, Kohalisky said he was not going to release the car until some of respondent's outstanding bills were paid him.

Respondent then went to the Novi police on January 30, 1971. There are three versions of what then took place between respondent and the police. The respondent's version was that he told the police officers that his car had been taken, and was possibly being held as a prank by

Kohalisky even though the police wanted to view it as stolen.[1] The Novi police officers who handled the complaint, on the other hand, testified that the respondent told them the prankster was one Parmenter.[2] On cross examination by State Bar counsel, respondent admitted that he did not tell the Novi police that he had delivered the car to Kohalisky on January 24.[3] Thus whatever the police were told it was not the truth.[4] The Grievance Board found that:

> "On Sunday, January 30, 1971, the respondent went to the Novi Police Department at approximately 10:30 or 10:45 p.m. and stated that his car had been stolen from his apartment in the City of Southfield . . . Upon inquiry from the respondent the officers were advised by him that Mr. Parmenter, . . . had taken his automobile for no other apparent reason than possibly a prank."

The officers informed respondent that they could not be of help in returning the car to him and suggested he file a stolen car report with the Southfield Police. The following day, January 31, 1971, respondent contacted the Southfield Police Department complaining that there had been a larceny by conversion of his car by Kohalisky. Respondent later obtained possession of the car by writ of replevin in a civil suit.

The State Bar Hearing Panel concluded that "a preponderance of the evidence" established

that respondent: (a) ". . . did wrongfully make a false report to the Novi Police Department indicating that his car had been stolen from his home on January 30, 1971" and (b) ". . . attempted to use the officers of the Law Enforcement Agency to effect the remedies which were available to him civilly."

The panel ordered that respondent be reprimanded for misconduct in that his actions were contrary to Supreme Court Rule 15 relating to the State Bar of Michigan and contrary to the Canons of Professional Ethics.[5] On July 6, 1972, the Grievance Board affirmed the order of discipline and added costs to the respondent.

The issue is whether the use of misrepresentation by an attorney to police officers to induce official police action is in violation of Rule 15 and/or DR 1-102(A) (4).

As stated above, whichever story respondent told the police, it was not true. He told the police the car had been taken as a prank when in fact he had voluntarily turned the car over to his repairman for needed work. Respondent's misrepresentation constituted a violation of DR 1-102(A) (4) and Rule 15. Respondent was deceiving the police officers in hopes of having them do for him what he should have done and subsequently did do by civil action.

The discipline ordered was that the respondent be reprimanded.[6] This is the

mildest form of discipline which can be applied by the Grievance Board for misconduct.[7] We believe that the discipline ordered by the Grievance Board was correct.

When he made the initial contact with the Novi police, respondent was clearly suffering from emotional and hypertense reaction to what he believed, not without reason, was an illegal conversion. He was not operating rationally. He quickly realized the error of his ways. He refused to make out a stolen car report and the next day made a fairly accurate report of the incident to the Southfield Police. After that, respondent resorted to the appropriate legal remedy to regain possession of his car. While definitely misconduct and not commendable, respondent's action is clearly not the kind of misconduct warranting disbarment or suspension.

The Grievance Board order is affirmed with costs to the respondent.

/s/ (signature)

/s/ Thomas E. Brennan

/s/ (signature)

/s/ Thomas M. Kavanagh

/s/ Mary S. Coleman

FOOTNOTES

[1] On direct examination, respondent stated:

> "Okay. I told Corporal Johnson my car was being held as a practical joke. . ."
> "Q. Did you tell him who was holding it?
> "A. Yes.
> "Q. Who did you say was holding it?
> "A. Nicholas Kohalisky.
> "Q. Was any other name mentioned?
> "A. No--I told him it was being held at the property of Bruce Parmentier." [sic]
> * * *
> "A. . . . he [police officer Johnson] said he could not help me.
> "Q. Why?
> "A. Because there was no stolen car report.
> * * *
> "Q. What else was said?
> "A. I mentioned to him that I felt that a larceny by trick or larceny by conversion had taken place. . ., and that I would not make out any report as he said he required in order to help me because I told him that was not the facts."

Transcript, pp 116-118.

[2] During the hearing Corporal Johnson of the Novi Police Department, who investigated respondent's charges stated:

> "He [respondent] advised us that to his knowledge Mr. Parmenter took his car for no apparent reason other than possibly a prank. . ." Transcript, p. 15.

Officer Appleton who aided Corporal Johnson in this matter testified that respondent:

> ". . . stated Bruce Parmenter had taken his car from Southfield at his apartment and the only explanation he could give us, as far as him taking the car, was that it was a prank." Transcript, p 30.

[3] On cross examination of respondent, the following exchange took place:

"Q. As I understand it, then, you didn't tell the Novi Police that you had delivered the car to Mr. Kohalisky on January 24?
"A. That's correct." (Transcript, p 141)

[4] There was a further conflict of stories which led to a later police report alleging respondent filed a false report to the police. Police officers said respondent told them the car was taken the 30th, but the fact was, of course, it was taken earlier.

On the evening of January 30, shortly after Officers Johnson and Appleton returned to the station house from their meeting with respondent at the garage where his car was being kept, Frank Barabas, also a Novi police officer, reported for duty on the midnight shift.

Barabas and Johnson began to discuss the respondent's case. Barabas informed Johnson that he had been at Kohalisky's garage earlier

in the week on a civil matter and, at that time, observed a gold Buick.

Johnson also testified that while at the garage with respondent on the evening of January 30th, respondent identified the gold Buick as his. Officer Johnson looked through the garage windows and viewed the car. He testified as to that observation:

> "It was in the position as though it was not just pulled in. It was sitting to the left of the main area of the door. This was in the winter time and it was snowing and very sloppy outside. The car was all dry."
>
> * * *
>
> "Q. Did he tell you when it was taken?
> "A. I believe it was that day on the 30th."
> Transcript, p 16.

[Respondent testified that he did not tell the Novi Police that the car had been taken from his home that evening. Transcript, p 141.]

Thus, a combination of Johnson's and Barabas' observations conflicted with any theory that the car had been taken on the evening of the 30th. The report of the respondent's giving false information was given to the City Attorney and it appears no further action on it was taken.

[5] Rule 15 of the State Bar of Michigan states in part:

> "Rule 15. Standards of Conduct.
>
> "Sec. 2. Grounds for Discipline in General. The following acts or omissions by a member of the bar of this State, individually or in concert with any other person or persons, shall constitute misconduct and shall be grounds for discipline whether or not the act or omission occurred in the course of an attorney-client relationship.
>
> * * *
>
> "(4) Conduct that violates the standards or rules of ethics or professional responsibility adopted from time to time by the Supreme Court of this State;"
>
> * * *

The Code of Professional Responsibility adopted by this Court October 4, 1971 [385 Mich lvi (1971)] and given immediate effect states in part:

> "DR 1-102 Misconduct.
>
> "(A) A lawyer shall not:
>
> * * *
>
> "(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."
>
> * * *

[6] Rule 15, Sec. 3 states:

> "Sec. 3. Types of Discipline. Misconduct shall be grounds for:
>
> "(1) Revocation of the license to practice law in this State;
> (2) Suspension of a license to practice law in this State until further order of the Court;
> (3) Reprimand by a Hearing Panel, the State Bar Grievance Board, or Court."

[7] State Bar Grievance Administrator, Richard H. Senter, discussed the role of reprimands in his article "On Grievances." 50 MSBJ No. 12, pp 775, 776 (December 1971). He stated:

> "Reprimands are ordered in situations wherein a violation of professional standards is clearly established, but in lesser degree than customarily warrants deprivation of the right to practice--at least for a single offense alongside a generally exemplary record--or wherein mitigating circumstances are found."

STATE OF MICHIGAN
SUPREME COURT

In the Matter of
NEAL L. GROSSMAN, a Member
of the State Bar of Michigan,

RESPONDENT. No. 54,257

BEFORE THE ENTIRE BENCH

T.G. KAVANAGH, J. (For Reversal)

Grossman and his client had a convoluted relationship. The client was an auto repairman, and Grossman utilized his services as such. The client in turn employed Grossman's services as his attorney. They disagreed about the fees charged by each for their respective services.

The repairman had possession of Grossman's car and refused to give it back until Grossman paid him for work done on the car. Grossman went to the Novi police to secure their aid in recovering his car. The dealings between Grossman and the police are the basis for his censure by the Grievance Board.

While there was a dispute concerning the legal fees charged by Grossman, Grossman did not go to the police for their assistance in resolving that dispute or to pressure the repairman to pay his fees. Neither can it be said that

Grossman used his legal training or his license as a lawyer in his efforts to recover his car. He went to the police much as any other citizen might go to the police to obtain their assistance in recovering his property. Thus, the grievance does not concern Grossman's practice of law.

The Grievance Board accepted the testimony of the police that Grossman lied to them in reporting that the car was stolen or removed from his possession without his knowledge. At the grievance hearing the disputed question of fact was whether Grossman reported to the police that the car had been stolen. Grossman testified that he told them that the car was taken as a prank. It is argued that Grossman's admission at the hearing that he told the police the car was taken without his knowledge in light of his concession at the hearing that he had delivered the car to the repairman constitutes a sufficient basis for finding him responsible for making a false report and an adequate foundation for the Board's censure.

In deciding whether any discipline is justified, we should distinguish carefully between what a lawyer does as a lawyer and what he does as a private citizen. The very highest standards can properly be required of a lawyer in his professional conduct, but when he is not purporting to act as a lawyer, his private conduct must be publicly scandalous or indicate that he properly cannot be trusted to advise and act for clients before it justifies public Bar discipline.

In this case the conduct was not egregious. It was foolish and may have amounted to a misdemeanor. Even if the prosecutor had preferred charges of making a false report to the police[1] and private citizen Grossman had been convicted of that misdemeanor the matter would be of little moment and should hardly concern the profession.

Formal reprimand in the circumstances of this case appears inordinate and in our view diverts the proper attention of the grievance procedure.

We would reverse and dismiss the complaint.

/s/ Thomas Giles Kavanagh

/s/ Charles L. Levin

[1] MCLA 750.411a; MSA 28.643(1). In this regard it is noteworthy that the Oakland County Prosecutor made an affirmative decision not to prosecute the respondent here.

"F"

September 25, 1973

William R. Walsh, Jr., Esq.
Attorney at Law
Sharp, Walsh, O'Sullivan,
Beauchamp & Edson
307 Michigan National Bank Bldg.
Port Huron, Michigan 48061

Dear Mr. Walsh:

This office is in receipt of two envelopes bearing labels of your law firm with the firm name of Stommel, Sharp, Walsh, O'Sullivan, Beauchamp & Edson, which apparently were mailed to Attorney Neal L. Grossman the latter part of August 1973.

As we are aware that Circuit Judge Kenneth J. Stommel is no longer with your firm since his election to the Circuit Court, it is requested that you advise this office why Judge Stommel's name still appears upon your return address labels.

Your attention is directed to Canon 2. DR 2 -102 (B) and Ethical Consideration 2-12 of the Code of Professional Responsibility, which prohibits the use of an attorney's name, while occupying a judicial position, to remain in the firm's name, unless he is permitted to practice law while occupying that position.

A prompt reply will be appreciated.

Very truly yours,

/s/ Marcel C. Phillips
Marcel C. Phillips
Assistant State Bar
Grievance Administrator

MCP:jg

cc: Neal L. Grossman, Esq.

"G"

October 4, 1973

Neal L. Grossman, Esq.
Attorney at Law
4120 West Maple Rd., Ste. 105
Birmingham, Michigan 48010

Dear Mr. Grossman:

Reference is made to your letter of September 4, 1973 and my letter to the law firm of Sharp, Walsh, O'Sullivan, Beauchamp & Edson dated September, 25, 1973.

Mr. William R. Walsh, Jr., a member of the firm, replied to my reference letter on September 28, 1973 advising that they are aware of the Canons of Ethics with regard to the use of Judge Stommel's name on office stationery and mailing labels. Mr. Walsh advised that new

stationery and new mailing labels had been received and were in use at the office. He stated that any old mailing labels which might be used were to have the name of Stommel deleted. Apparently, some of the labels had been used without this deletion which was contrary to instructions but was an oversight by his office.

In order to avoid further mistakes, Mr. Walsh advised that his office was discarding any old labels and materials which might still have Judge Stommel's name on them.

Your cooperation in this matter is indeed appreciated.

Very truly yours,

/s/ Marcel C. Phillips
Marcel C. Phillips
Assistant State Bar
Grievance Administrator

MCP:jg

"H"

CONSTITUTION OF UNITED STATES, AMENDMENT XIV, Section 1. Citizenship rights not to be abridged by states. All persons born or naturalized in the United States, and subject to the jurisdictionthereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities

of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

"I"

42 U.S.C. Section 1983 (1970) originally enacted as Act of April 20, 1871, ch. 22, Section 1, 17 Stat. 13 states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

"J"

McGovern v. Van Riper. The court in McGovern quoted Melvin v. Reid, 112 Cal. App. 285, 291, 297 P. 91, 93 (1931), which said the right to pursue and obtain happiness was guaranteed by the "fundamental law of the state" and that this included the right to be free from unnecessary attacks on character. 137 N.J. Eq. at 46, 43 A. 2d at 525. The court in McGovern concluded: (1945)

I have, therefore, reached the conclusion that the right to privacy exists and that said right is protected by our state constitution. . .

. . .

. . . The premature dissemination of such records is an unreasonable, unnecessary and improper attempt to exercise the reserved police power of the state, and contravenes . . . our state constitution

Id. (1947) 140 N.J. Eq. 341, 54 A. 2d 469. The court held that the right of privacy is one of the "natural and inalienable rights" recognized in N.J. Const. art. i, par. 1, and that the dissemination statute violated it.

"K"

See also: Roe v. Wade, 410 U.S. 113, 152-56 (1973); Griswold v. Connecticut, 381 U.S. 479 (1965).

"L"

MICHIGAN LAW
328 Mich 557

SIMPSON v. BURTON
HOWARD v. BURTON
THOMAS v. BURTON
No. 5

Supreme Court of Michigan
Oct. 2, 1950

Three separate actions by Cola Mae Simpson, Naomi Howard, and John C. Thomas against William Burton for false arrest and imprisonment. The three cases were consolidated for trial and on appeal. The Circuit Court for the County of Wayne, George B. Murphy, J., entered judgments for plaintiffs after jury verdicts and defendant appealed. The Supreme Court, Reid, J., held that where mother reported to police the circumstances and her belief that one of plaintiffs had attempted to poison her baby and belief in the complicity of one of the other plaintiffs, trial court erred in excluding police record since it was competent to show what information officers acted upon in taking plaintiffs into custody, although record was incompetent as substantive proof of the matters related by mother to police.

Judgments reversed and new trial ordered in each case.

1. Trial 228(4)

In false arrest and imprisonment action, an instruction that if defendant caused the police to arrest plaintiffs and hold them in custody until they were discharged, defendant would be liable to plaintiffs in damages for what they suffered was insufficient and incomplete as to lack of justification and probable cause necessary to render defendant liable.

2. False Imprisonment 15(1)

One who merely gives information regarding an offense does not incur liability for alleged arrest and detention without probable cause, though party giving information acted maliciously or without probable cause.

3. Evidence 151(7), 318(3), 383(3)

In false imprisonment action, where mother reported to police the circumstances and her belief that one of plaintiffs had attempted to poison her baby and belief in complicity of one of other plaintiffs, trial court erred in excluding police record as hearsay, since it was competent to show what information officers acted upon in taking plaintiff into custody, although it was incompetent as substantive proof of matters related by mother to officers.

4. Witnesses 246(2)

It is of great importance that trial court exercise right by appropriate questions to produce fuller and more exact testimony, but great care should be exercised that court does not indicate its own opinion and does not lay undue stress upon particular features of witness' testimony that might in eyes of jury tend to impeach him.

5. Witnesses 246(2)

In false imprisonment action, where very many questions were directed at defendant in interrogation by trial judge, trial judge went to very extreme limit in his examination of defendant.

M.D. Smilay, Detroit, for appellant.

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Frank Schwartz, Detroit, Arthur M. Lang, Detroit, of counsel, for appellees.

Before the Entire Bench.

REID, Justice.

These three cases were consolidated for trial and on appeal. Verdict was had in favor of each plaintiff but differing in amounts as to each plaintiff. Defendant appeals.

Each plaintiff declared for false arrest and imprisonment based on false and unjust complaint, without just cause or provocation, made to the Detroit police department, of commission of a serious crime, the said arrests resulting in plaintiffs' detention overnight.

Defendant made general denial and did not in his answer assert the truth of the charge that plaintiffs had committed the designated serious offense.

The parties dispute as to matters which occurred on November 18, 1946, and those matters arose over the illness of a child of Lora Lee Thomas, then bookkeeper for defendant. Miss Thomas claimed that a preacher in Georgia was the father of her illegitimate child, and that while she was pregnant with said child, she came to Detroit and lived and kept defendant's books at the residence of defendant, who conducted some rental collections and maintained an office at his home. Miss Thomas' baby was born May 18, 1946. Miss Thomas (now the wife of defendant) claims that before November 18, 1946 she had called the attention of a doctor to the contents of her baby's Castoria container and that the doctor discovered Lysol in the baby's Castoria.

Miss Thomas further claims that on the afternoon in question (November 18, 1946) defendant Burton's little boy hastily called her to see what was wrong with the baby; that she found that the baby could hardly breathe; that Naomi Howard, one of the plaintiffs, was there and volunteered to get a doctor but that she, Miss Thomas, wanted her own doctor because of the discovery of Lysol previously and she was suspicious that an attempt at poisoning had again occurred.

Defendant concurs in the above statements of Miss Thomas and claims that the doctor called by Miss Thomas was not in and later some doctor took the child to a hospital where it appears

that the child's stomach was pumped out, no poison found, and within a few hours the child died of bronchial pneumonia. All three plaintiffs were at the residence of defendant about the time the baby became ill. It is inferable that defendant had been informed of the episode about the Lysol in the baby's Castoria and knew of the fact that on the afternoon in question, disagreements had occurred between the mother and some of the plaintiffs about how the baby should be taken care of.

On November 18, 1946, defendant about 4:00 p.m. received a call to go to the house from the mother (Lora Lee) who was crying and saying that the baby was seriously ill. Defendant drove his car hastily to his house where the mother met him and told him further about the child and of occurrences just after the illness of the child was discovered and reported to her.

Defendant claims he rushed the mother to the hospital and that after she went upstairs at the hospital he waited about four or five hours and thinking the police might have taken the mother under arrest or for questioning, he went to the Canfield station, and was there informed by the police that they had a flash message to pick up the three plaintiffs. Defendant further claims that he was required by the police to go along with them to guide them to the several places where the three plaintiffs could be found and to identify them. Defendant also

testified that he thought the plaintiffs were guilty of some offense respecting the illness of the child, but that he did not request the police to arrest the plaintiffs. The three plaintiffs were taken by the police to the police station, questioned and detained over night. They were released later for lack of evidence.

The three plaintiffs, respectively, gave testimony to the effect that defendant requested the officers to make the arrest. Officer Truax on direct examination testified that the defendant requested the arrest of the plaintiffs, but on cross-examination he stated that the defendant merely said he believed them guilty.

The defendant claims that the mother, Lora Lee Thomas, related to the officers the circumstances which indicated to her mind the guilt of the three plaintiffs; that he (defendant) merely pointed out the three plaintiffs as the persons who were already under suspicion as a result of the statements of Lora Lee Thomas; that he (defendant) justifiably acted as an ordinarily prudent person would act under similar circumstances, without falsehood and without malice, and that the officers acted upon their own judgment on the information given them by the mother, Lora Lee Thomas, and without any request or suggestion from defendant that the officers should take the three plaintiffs into custody.

Defendant in a request to charge urged his good faith as a complete defense. The court

did not in his charge instruct the jury that if they found that the defendant did not request the arrest of plaintiffs and that defendant did not make any false statement nor give the police officers purposefully a false impression which an ordinarily prudent person would not give under the circumstances, defendant would not be liable. If the jury had failed to find by a preponderance of evidence that the police in making the arrest of plaintiffs did act upon false statements and impressions given them by defendant, defendant would not be liable. The court did not clearly so charge the jury. The following instruction by the court is deemed insufficient and incomplete: "If Mr. Burton caused the police to arrest these people, the plaintiffs, and hold them in custody until they were discharged, he would be liable to the plaintiffs in damages for what they suffered at that time for that arrest and detention."

[1] There is nothing in the remainder of the charge to supply the deficiency as to lack of justification and probable cause necessary to render defendant liable.

During redirect examination of plaintiffs' witness, Officer Truax, the following occurred:

"The Court: Did he tell you a child in his house was poisoned? A. Yes, and was taken to the hospital.

"The Court: What did he ask you to do? A. Well, he told us he believed the child was poisoned.

"The Court: Yes. A. And he told us the name of the persons he thought might have done it.

"The Court: Then what did he say? A. Then that's the only thing I remember of the complaint.

"The Court: What did he want to do with them? A. He took us over to arrest them.

"The Court: Did he tell you he wanted these people arrested? A. I don't recall if he actually requested it, but he gave us their names and he thought they did it."

[2] Under the Michigan law, one who merely gives information regarding an offense does not incur liability for alleged arrest and detention without probable cause, though the party giving the information acted maliciously or without probable cause.

"It is * * * the law of Michigan that one who merely gives information regarding an offense does not incur liability, even though the party giving the information acted maliciously or without probable cause. Poupard v. Dumas, 105 Mich. 326, 63 N.W. 301; Shinglemeyer v. Wright, 124 Mich 230, 82 N.W. 887, 50 L.R.A. 129. This seems to accord with the general rule, Burlington Transportation Co. v. Josephson, 8 Cir., 153 F. 2d 372, and Richardson v. Empire Trust Co., 230 Mo. App. 580, 94 S.W. 2d 966." Carr v. National Discount Corporation, 6 Cir., 1949, 172 F. 2d 899, 902.

The court excluded the police record that Lora Lee (the mother) reported to the police on November 18, 1946, the circumstances of Lysol in the baby's Castoria and her belief that her brother (one of the plaintiffs) had attempted to poison her baby, and belief in the complicity of one of the other plaintiffs. Yet the court in his charge to the jury, among other things, said, "One of the main things for you to determine is, first, what was the primary cause of this arrest? Who was the party or parties that started this trend of events?" The statements of the mother, Lora Lee Thomas, if admitted in evidence, might well have caused the jury to conclude that such statements motivated the officers in making the arrest and not any act or statement on the part of defendant. The court was in error in excluding the report showing her statement to the officers.

Counsel on the pre-trial had stipulated and agreed without reservation that the police record should be received in evidence on the trial and recourse thereto be available to counsel for pertinent and material matters. Michigan court rules 1945, No. 35, sec. 4.

[3] The court was in error in excluding the police record as incompetent and hearsay. It was incompetent as substantive proof of the matters related by Lora Lee to the officers, but competent to show what information the officers acted on in taking plaintiffs into custody.

[4, 5] Defendant complains of the questions asked by the court of the witnesses, particularly of the interrogation of defendant. Those questions were very many in number and in some instances may well have unjustifiably aroused suspicion in the mind of the jury as to defendant's credibility because of intensive cross-examination of defendant by the court. It is of great importance that the trial court should exercise the right by appropriate questions to produce fuller and more exact testimony, but great care should be exercised that the court does not indicate its own opinion and does not lay undue stress upon particular features of a witness' testimony that might, in the eyes of the jury, tend to impeach him. We think the trial judge went to the very extreme limit in his examination of defendant. See In re Stockdale's Estate (Appeal of the City of Flint), 157 Mich., 593, 606, 122 N.W. 279.

For the errors hereinbefore referred to, the judgments are reversed and new trial ordered in each case. Costs to defendant.

BOYLES, C.J., and NORTH, BUTZEL, CARR, BUSHNELL and SHARPE, JJ., concurred with REID, J.

DETHMERS, J., concurred in the result.